Jura Populi Anglicani:

OR

The SUBJECT's Right OF PETITIONING

Set forth.

Occaſioned by the CASE of the

KENTISH Petitioners.

With ſome Thoughts on the Reaſons which induc'd thoſe Gentlemen to Petition: And of the COMMONS Right of IMPRISONING.

Nulla Veritas ullâ de re ita diſertè cavere poteſt,
Ut malitioſa calliditas locum fraudi non inveniat.
Ulpian, Of the Laws of his time.

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W. Musgrave.

THE PREFACE.

'TIS *a melancholy Reflection to consider how universal a dissatisfaction the Management of the House of Commons has this Session caus'd in the People of* England. *Among the many who arraign their Proceedings, there are none who make not the Treatment of the five Gentlemen who presented the* Kentish Petition, *one Article of Impeachment against them: and the most intelligent part of the People have been free in saying, That the punishment of them plainly demonstrates very extraordinary Designs, and must be allow'd, even by men of Candour and Sense, to give just grounds for all the Jealousies and Suspicions that have been entertained.*

'Tis not my design in handling this Subject, to use any Artifices or false Colours, to foment such Jealousies as these, but to discharge a Duty which I owe the Community, and to prevent an intolerable sort of Slavery, which may be brought in upon us, if care be not taken to fence against such Acts of Power, and Infringements of our Liberty, by shewing the Injustice and Illegality of them.

Tho the Task be very grateful, and what I could not but undertake, when I considered how necessary it was to run down that Power, which has been assum'd to destroy the Freedom we are entitul'd to by the Law of Nature, *and municipal Laws of this Land; yet two Considerations there are which did not a little discourage me in the Undertaking.*

First, 'Twas no small check to me to consider how invidious a thing it is to censure the Proceedings of that Great and Honourable Assembly the House of Commons. The People of England *generally call them their Representatives, and so far do they think themselves interested in what they do, as to espouse their Acts for their own, and reckon any Censure of them to be an Arraignment of the whole People. He therefore that will be so hardy as to attack such an Authority as this, may well be under*

ſome concern at the Undertaking, and had need in the very entrance to remove a prejudice which is enough to defeat his ſincere Endeavours to ſerve the Publick. The Apology which I ſhall here make for my ſelf, is to deſire thoſe who are ſo tender of the Honour of their Repreſentatives, to conſider,

Firſt, That he who uſes a Freedom in ſpeaking againſt the Proceedings of the House *of* Commons, *is not neceſſarily to be ſuppos'd to ſpeak againſt the whole Houſe, much leſs the whole People of* England. *'Tis true indeed, when a Queſtion is carried, tho it be only by one Voice, it is as much the Act of the whole Body, as to any force and operation in our Conſtitution, as if it had the Suffrages of every individual Perſon. Will any one ſay that ſuch a Reſolution, in the Debates of Men* without Doors, *concerning its being reaſonable or unreaſonable, is as much to be reckoned the Act of the whole Body, as if it had the cheerful Suffrages of them all? To ſpeak a little more plainly, Let us conſider a Queſtion at the very time of diviſion, with the Voices equal on both ſides. In this caſe, men reaſoning and ſpeaking their minds freely concerning either ſide of the Queſtion, cannot be ſaid to be guilty of any Offence, or utter any Reflection againſt the People of* England, *or their Repreſentatives, becauſe they whoſe Suffrages he condemns are no more than the other ſide, whoſe Proceedings he juſtifies. Afterwards, when ſuch an equal diviſion as this is decided by the* Speaker, *it muſt be own'd that his Voice makes it the Act of the Houſe: But what in reality does ſuch a Perſon do? Does he any more than cenſure that one Member of the Houſe? Or can his Reflections reach any more of the People of* England, *than thoſe who choſe him for their Repreſentative? If in ſuch a caſe, the* Speaker *ſhould happen to be a man of crooked Deſigns, notorious for Falſeneſs and Unſincerity, as well as other Immoralities, and ingag'd in all the Intereſts of a Party, ſuſpected and feared by far the greater part of the People; would it be poſſible for Human Nature to have that Reverence which ſome contend for, for ſuch an Ordinance as this? Or ought he in juſtice or good ſenſe to be cenſured as an evil Man, and one who boldly reviles the People of* England, *who uſes ſome freedom in ſpeaking againſt a* Reſolution, *which ow'd its Sanction to ſuch a corrupt Voice? This ſhews us what opinion we are to have of thoſe who are free in cenſuring ſuch Reſolutions when they are carried by greater Majorities. If a matter ſhould happen to be puſh'd on by the violence of a Faction, wherein the Ringleaders are Men whom the People have a long time thought Enemies to the Government under which they live; if the very Fact it ſelf carry in it very broad ſigns of evil Intentions; if it be contrary to the natural*

Rights

Rights of the People, and Laws of the Land, 'tis not the Majority of the House will be able to reconcile men to it: And if upon the account of its Oppressiveness and Illegality, the Voice of the People be every where against it, 'twill be a Solecism to say, That he who in defence of the Peoples Rights, uses a Freedom in speaking against it, arraigns the Justice of the whole People of England, *and wounds their Honour through the Sides of their Representatives.*

'Tis not to be wondred that the imprisoning of the Kentish *Petitioners should have the Voices of the major part of the House of Commons, when (besides the great inclination discover'd by the Spe——er) Sir* Ed——rd Sey——r, *Sir* Bar——w Sh——er, *Mr.* J——n H——w, *Mr.* Ham——d, *Mr.* Har——rt, *and others press'd violently for it. What so many Leaders in the Party contended earnestly for, could not but have the approbation of those who voted as constantly with them, as if they thought it both their Duty and Interest so to do.*

But tho that was the Act of the greater part, 'twas not of the whole House of Commons. All those Worthy and Honourable Members, who have always firmly adher'd to his Majesty's Interest, who have associated for him, who have given perpetual Demonstrations of their Enmity to France, *and the abdicated Family, and heartily desired to have all those things done which the* Kentish *Gentlemen petitioned for; were averse to this, as they were to other fatal Proceedings, which yet they had not Power to prevent. If then a great and honest Party in the House, and in a manner the whole People* without doors, *except the Papists and Jacobites, inveigh against the Imprisonment of those Gentlemen, as a notorious Infringement of the Liberties of the People of* England: *This, I hope, will be a sufficient Apology for me, and secure me from the Censures of all those who are apt to call such an Undertaking as this an impudent Arraignment of the Justice of the* House of Commons, *and of the whole People of* England.

By way of farther justifying my self as to this particular, I must desire those People to consider, that the House of Commons *are not the whole People of* England's *Representatives. It is very evident that the Representatives of the People are those to whom, when they entred into Society, they resigned up that Power which they had in the state of Nature, to punish Offences against the Law of Nature, in prosecution of their own private Judgment, and authorized to make Laws for them, which are the Rules to determin all the Controversies, and redress the Injuries that may happen to any Member of the Commonwealth. Thus the Society, or, which is all one, the Power Legisla-*

tive,

tive, are the only Repreſentatives of the People. The Commons may be ſaid to repreſent thoſe Freeholders, Citizens and Freemen who choſe them: but what are they to the whole Body of the People, who are repreſented in the Political State, and are entituled to all the Benefits and Advantages of it? This ſhews us what Miſtakes thoſe men run into, who violently contend for an extravagant Power in the Houſe of Commons, becauſe they think this is to aſſert the Right of the People of England *in the hands of their Repreſentatives. 'Twill be allow'd me, I believe, in this favourable Juncture, to ſay that the Lords, who have throughout this Seſſion ſpoken the ſenſe of the great bulk of the People of* England, *and have with great Wiſdom, Temper, and Conduct, done all that was in their power to ſerve their Country, and prevent its Ruin; are (as they are a part of the Legiſlature, which alone preſcribes Laws and Rules to the Community) no leſs Repreſentatives of the People of* England *than the Commons are. The Services they have done the Publick will, I hope, be gratefully remembred by the People, and help to convince them that they have err'd greatly, and built our Happineſs and Security upon too narrow and dangerous a bottom, who have ſo violently and unreaſonably contended for the Power of the Commons, and would derive all thoſe Advantages from them, which flow from the whole Conſtitution. The regard which the People of* England *have had for that State which in a miſtaken notion they called their Repreſentatives, may be of very fatal conſequence in breaking the Ballance of Civil Power, and ſhewing the Grand Enemy where he is to make his Attacks to ſubdue a People whom his Arms cannot hurt.*

The brave Lacedemonian *Matron renounc'd her own Son, when he fled from Battel, and forgot the Services which he ow'd his Country. If the Houſe of Commons were the Repreſentatives of the People of* England *in that ſenſe which ſome contend for, ought we to have any great Veneration for them, if they ſhould quit the manifeſt Intereſt of their Country, and utter a ſenſe quite different from that of the People? If any think they have done ſo in the matter now in debate, they will allow this to be ſome Apology for cenſuring what they have done.*

There is (as I ſaid) another Conſideration which diſcourages me from publiſhing my Thoughts on this Subject; that is, the Cenſure which I ſhall incur of ſerving the Deſigns of a Party. This is the grand Artifice which thoſe who have brought themſelves under the Suſpicion of their Country, have made uſe of to ſupport their Faction. To brand their Antagoniſts with the Name of Whigs, *is the way they have taken to make them deſert the Service of the Pulick, and liſt themſelves under*

their

their Banner. As this has been their Management in other Caſes, ſo was it particularly remarkable when the Kentiſh *Petition was preſented to the Houſe. Sir* E— d S—r, *to bring an Odium upon it, and make it a party Buſineſs, nibbled a little at a particular Name, and was pleas'd to ſay* it ſmelt of Forty One. *'Twas his remarking the Name, that gave the Gentleman who bore it an Opportunity to ſay, that he was very well known to be of a Family,* which was remarkable for oppoſing the Uſurpations of the Commons.

Since I find what uſe is made of thoſe old Names of Whig *and* Tory, *how inconſiderate People are impos'd upon by them, and ſeduc'd from the real Intereſt of their Country; before I diſcover of what Party I am (which I will do to let my Reader fairly ſee how far he ought to be prejudic'd againſt me) I will crave leave to conſider thoſe Names, with the different Significations they have born, and examine whether thoſe that make uſe of them to ſerve their Cauſe can juſtly apply them to the Factions among us.*

A Tory, *if we conſider the moſt moderate Acceptation of the Name among thoſe who wore it, was one who lov'd the* Engliſh *Monarchy and Hierarchy, had a religious Regard for all the Rights of them both, which he took to be of* Divine Inſtitution, *and abominated all thoſe factious Spirits, which decryed the Authority, or endeavour'd to infringe the Power of either. The Generality carried the Notion much higher, and wou'd allow none to deſerve that Name, but ſuch as were againſt having the King's Power fetter'd by Laws, or his Will any way govern'd or reſtrain'd by the Humours of his Subjects. The* Whig *has enlarg'd this* Idea, *and taken ſome other things into it. In the account he gives of a* Tory, *he tells us, that if he be for Kings and Biſhops, they muſt be ſuch Kings and Biſhops as he likes: That in the late Reigns he was not only for the* Jure Divino *Right of our Kings, and for ſubmitting all our Laws and Liberties to the Royal Will and Prerogative, but was for raiſing the exorbitant Power of* France, *and deſtroying* Holland, *in Compliance with the Deſires of our Princes, who could not otherwiſe make their Government arbitrary, and introduce Popery.*

A Whig, *as he is deſcrib'd by a* Tory, *with Reſpect to his Inclinations to Civil Government, is one who hates the Power and Prerogative of Kings, and is perpetually raiſing Factions in the State, in order to ſubvert Monarchy, and ſet up a popular Government: When conſider'd with Reſpect to the Eccleſiaſtical State, he is repreſented to be an Enemy to the Hierarchy, one who wou'd deſtroy the Order of Biſhops, as well out of hatred to the Order it ſelf, as becauſe they are the Supporters of*

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the Monarchy. Upon this account it is that he is further represented to be a Lover of the Dutch, *because they are Enemies of Kingly Government, and Favourers of those factious Male-contents. A* Whig, *if you'l take his own Character and Description of himself, (generally speaking) tells you, that he is for Kingly Government, and the Church, as by Law establish'd; that he prefers the* English *Constitution to any other in the World; that those Reflections were craftily and slanderously thrown upon him by the Ministers and Vassals of the last Reigns, because he oppos'd their Endeavours to bring in an Arbitrary Power, which was to be according to the* French *Model, and must be accompanied with Popery; that he is indeed a Lover of the* Dutch *(as are all the People of* England, *unless it be the* French *Party) but not out of any factious Design, or respect for their sort of Government, but because they have been good Friends and Allies to us, have steadily and bravely withstood the growing Power of* France, *and are a great Bulwark of the Protestant Religion, and Liberty of* Europe.

These are the shortest Accounts that we have of the Ideas *that belong to those old Party Names, from the Descriptions of the opposite Parties. Time, the great Discoverer of dark and mysterious Designs, has let in some Light upon us to help us to discern who are in the right; and from the Management of Affairs in this present Juncture we may easily learn whether those who make use of these Names to serve their Cause, can justly apply them to the Factions among us.*

The Tory Party, *as they affect to be called, is that Part of the* Ho—se *of* Com—ns *which has govern'd this* Session, *and directed all the Proceedings which have alarum'd the People of* England, *and made them every where exclaim against the Management of the lower Ho—se. If we consider the Men, and compare what they have done with the pretended Principles of their Party, 'twill hardly seem odder to see Sir* Ed—rd Sey—r *bring in a Bill to prevent* Brib—ry, *or Mr.* J--n H-w *exclaim against exorbitant Grants, or Sir* Ch—r Mu——ve *violent either against Grants or a standing Army; or to find them, who discovered a plain* Inclination *to quiet* France *in the Possession of all the Spanish Dominions, quarrel at the Treaty of Partition for giving* France *too much, than to see them assume the Name of* Tories. *Is not* Ro—rt Har—y *a Ringleader in this Tory Party? Is not his Bro——er* Edw-rd *a leading Member? Does not he attend all Ordinances, and as constantly every Weekday frequent the Service of the* Church *(for his is a Church Party) in St.* Stephen's *Chappel, as he does the Conven—cle every Lords-day? Are not the* Fo—ys, Win——tons,

St.

St. J—n, Har—y of Wey—th, Barn—ton, Ha—n, Ran--yl, *and others of that leven, Members of this Fraternity? 'Tis methinks hard to say how a Faction blended with such a Number of Names noted for their Inveteracy to the true Tory-Principles, can be called a Tory Party. Nothing sure but mere Necessity and Want of Men to serve some great Design, could make them who pretend to be genuin Tories, and consequently must hate a* Comprehension, *and love to keep their Party* pure and unmixt, *herd with a Set of Men so odious to them.*

But upon second Thoughts the Wonder will not seem so great; whatever Difference might formerly have been between them, 'twill upon a fair Examination now appear that there is a great Agreement in their Principles, and that those who keep up their Faction, by retaining the Name of Tories, *and running down* Whigs, *have nothing but the bare Name of their* Party, *and are that very thing which they run down. This will be very evident to any one who will but take a short View of what they have done, and compare the Loyalty of their Behaviour with their loyal Principles.*

Formerly the Tory Doctrine was, that the King was the Breath of our Nostrils, *that we fail'd in our Allegiance to him, and deserv'd not the Name of loyal Subjects unless we valued his Life more than our own, and would do all that lay in our power to preserve him and his Government, by shewing an Inclination to destroy his Enemies. Is this the Temper and Spirit of our present Tories? Are not Sir* Ed---rd Sey--r, *Sir* Ch--r Mus—ve, *and forty more, at this very time Members of the* Ho—se *of* Com—ns, *and of this* Tory *Party, who when the Conspiracy against the King was discover'd, and an Army lay ready to invade us, refus'd the voluntary Association, which was reckoned the best Expedient to preserve the King's Life, and prevent the Ruin of this Kingdom? Formerly Tories reckoned it an Act of Duty and Loyalty to repose an entire Confidence in the King, and to desire that he might be gratified, as with every thing else, so particularly with such an Army as he desir'd: And in the late Reign when the Army consisted of nineteen thousand Men, and the King had no other Occasion for them but to terrify and afflict his own Subjects, Sir* Ch—r Mus—ve *was pleas'd to say in the* Ho--se *of* Com---ns, *that 'twas a deplorable thing that the King should have no better Army. Was it not that good old Loyalist, and the Men of that Party principally, who reduc'd his present Majesty to the Allowance of seven thousand Men; and were the Cause of all the Calamities*

See their Names in the Appendix A.

that have been occaſion'd by it? In the Reign of King Charles *the Second, when that Gentleman had Grants from the King, 'twould have ſeem'd no leſs a Prodigy in theſe Kingdoms, to ſee a* Tory Houſe *of* Com--ns *offer to intermeddle with the King's* Grants, *as they have done, and make it an Article of Impeachment againſt a great Miniſter to take a Grant from the Crown, than to ſee a Church-party, who have told us that the King is Chriſt's* Vicegerent, *and Head of his Church here upon Earth, and that he has an uncontroulable Right to diſpoſe, as he pleaſes, of thoſe Fees with which the Crown has endowed the Church, offer to deſtroy the King's Right by bringing in a Bill to prevent the Tranſlation of Biſhops from one* See *to another. This* Bill *deſigned no great favour to the King or the Hierarchy, yet Sir* J——n Pack——ton, *who brought it into the Houſe, muſt be thought a Loyaliſt and true Son of the Church, becauſe he tells Churchmen, that he is ſo. Tho 'twas a* Bill for the better ſecuring the Proteſtant Religion, *yet there are but few Proteſtants, I believe, concern'd that 'tis adjourn'd (as the neceſſary Methods for ſecuring our Religion are) to another Seſſion of Parliament: If it be the next Seſſion tack'd to a Money-Bill (as the Jacobites ſay 'twill be) then we ſhall ſee the Proteſtant Religion as well ſecur'd, as ſome People would have it, who now turn the Methods of ſecuring it into jeſt and ridicule.*

I cou'd heartily wiſh that there were no other Inſtances, but theſe I have here mention'd, of the ill Treatment which both the Monarchy and Hierarchy have had from this loyal Church-party (as they would fain be reputed) whoſe Practices of late have been the plain Reverſe of what they formerly profeſs'd. Have not they arraign'd the King's Power in making Treaties, *which was never diſputed in any former Reign, no not by thoſe* Demagogues *in the Reign of K.* Charles *the Firſt, whoſe Memories and Practices they pretend to hate?*

Have not they pull'd down one principal Pillar and Support of the Monarchy, by creating a Diſtruſt between the King and his People, by repreſenting Men unfit for the Service of the Publick, and excluding them from having any thing to do in the Election of their Repreſentatives, *who are in places of Truſt under the King? Have not they deſtroy'd our very Conſtitution, and made our Government plainly popular under their ſole Management and Direction? Is it not a popular Government, and a very intolerable one, where they have uſurp'd the Power of the King and the Lords, and broken in upon the Rights of the People, by taking the Execution and Legiſlation upon themſelves, and puniſhing contrary*

to Law? Have not they usurp'd the Power of the King both Executive and Legislative, when they are grown to that Exorbitancy of Power, that they expect he will do whatever they require of him, tho it be to punish some who have long toil'd in the Support of his Government, and turn out others from Places of publick Trust, who have appear'd with a warm and extraordinary Zeal in his and the Country's Service; when they take upon them to censure and condemn what he does, tho it be profitable to us and our Friends, and his undoubted Right and Prerogative to do it; when, to prevent the Mischief and Confusion in which his Enemies would involve his Kingdoms, he has been forc'd to give the Royal Assent, where he knew 'twould not only hurt many of his Friends, but a very great Number of his good and loyal Subjects, and be of very ill Consequence to his Affairs abroad? Have they not invaded and usurp'd the Power of the Lords, by endeavouring to destroy their Jurisdiction, by tying them to new Rules and Methods in their Judicature, and forcing their assent to Laws by tacking of Clauses, and leaving with them, together with the Bill, all the ill Consequences *that should attend the rejecting it, which is plainly threatning them with the Wrath and Resentment of the Nation, impos'd on and incens'd by them? Have they not been highly injurious to the People, and invaded their Rights, by taking the Execution of the Laws upon them, which belongs not to their Province, and imprisoning such Numbers of their* Fellow-Commoners *, as they have done this Session?*

* *See the number of those imprison'd by them,* Append. *B.*

It must be very extraordinary Assurance that can make a Party, which has not only thus arraign'd the Actions of his Majesty, and been a constant Clog upon the Wheels of his Government, but has likewise usurp'd his Power, and brought in an arbitrary Popular Government, assume the Name of Loyalists, *and call others turbulent, seditious* Republicans. *If we would judg right between the two contending Parties, we ought to consider their Actions, and not the Names and Characters they themselves assume, or give one to another. If it be evident that the Tories have been highly prejudic'd against his Majesty's Government, if they have usurped upon the Crown, and depriv'd it of many of its just Rights, and the Whigs have born a constant Affection to the King, and endeavoured to continue him in Possession of all his Rights and Prerogatives: if in settling the Succession in the Protestant Line, Tories have not only discover'd a perfect Aversion to the Act, and used Artifices to elude it, but likewise fram'd that new Bill of* Rights *which was not contrived to recommend*

the Crown, and make it amiable to the Succeſſors; and the Whigs on the other hand ſhew'd themſelves both eager to have the Crown ſettled, and unwilling to have ſuch a Breach made in the Prerogative; then 'twill be evident that the Whigs Loyalty is greater than the Tories, or that the Object they have plac'd it upon makes it more agreable to us, and apter to promote our Happineſs and Tranquillity. If Tories be of thoſe loyal Principles they boaſt of, and the Object be the Abdicated Family: if it be this Loyalty of their Principles, and the regard they have to the Intereſt of that Family, that has made them uneaſy to the King, and downright Republicans under his Government, true Engliſh-*men will find but little reaſon, as things now ſtand, to admire their Principles or run into their Party. The Caſe in ſhort is thus: To this loyal* Tory-Party *(as they would be eſteem'd) we find all thoſe attach'd, whoſe Principles imbib'd in the late Reigns, make them firmly adhere to the Intereſt of K.* James: *Here we find all thoſe in a manner who were againſt the Abdication, Recognition, who would not allow his preſent Majeſty to be* rightful King, *and refus'd to enter into the* Aſſociation *to preſerve him and his Govenment: In this* Party *are all thoſe likewiſe whom either the Love of Mony, or of the* St. Germain *Family, or Popery has reconcil'd to the* French *Intereſt. 'Tis moſt certain that there is not a Man in the Houſe ingag'd in any of theſe Intereſts, who is not one of this Party; and as certain it is that all the Papiſts, Friends of King* James, *and the* French *King, without doors, applaud their Procedings, and own that they are fairly repreſented by them.*

From this Account then 'twill appear that the Parties are truly and properly to be diſtinguiſhed into thoſe who are for the Jacobite *or* French *Intereſt (for it is impoſſible to ſeparate them) and thoſe who are for our preſent Settlement, or the true Intereſt of* England. *This being the diſtinction of Parties, I ſhall as cheerfully and readily acknowledg my ſelf of a Party, as St.* Paul *own'd himſelf an* Heretick after the way *which his Enemies called* Hereſy. *If cunning men of the oppoſite Faction be able to carry their Management much farther; if by a crafty uſe of the Names of* Church, Tory *and* Whig, *they can impoſe on weak men, and keep them from being of this* Party, *that is, of the number of thoſe who are for the Intereſt of* England *and Proteſtant Religion, and Haters of* French *Power and Popery, we may thus be inſenſibly drawn into the Snares that are laid for us, and bring upon our ſelves all the Calamities we are afraid of. This may be: and I think 'tis manifeſt enough to conſidering men, that the Enemy, even this Seſſion, had*

made

made no ſmall advances towards gaining his ends, if ſome men of the Church *had not had more ſtrength of Reaſon to reſcue themſelves from the Jealouſies that were craftily and falſely ſuggeſted, and better Notions of the true Intereſt of the Church and dangers of the Publick than others. The Alarm given was, That the Monarchy and Church were to be deſtroy'd by* Republicans *and* Fanaticks. *The Biſhops ſaw where the real danger lay; that they were the* Thieves, *who* cried Thief firſt; *that thoſe whom the* Torys *call'd* Republicans *had ſufficiently demonſtrated by their behaviour to his Majeſty, how little they deſerved that Name which their Enemies had inſidiouſly put upon them; that the Republicans to be dreaded by them, were thoſe who ſided with the rankeſt of that ſort, and ran into all the exceſſes of Anarchy and Faction againſt the preſent Government, in order to diſpoſe things for another* Revolution. *They ſaw into what Power they were grown, how they had uſurp'd upon the King, how they had bullied the Lords, and endeavoured to deſtroy the Juriſdiction of that Houſe, with which they knew that all the Power and Authority of their Order muſt determine. And as in the Lower Houſe of Parliament they ſaw the Rights of the King, and the Juriſdiction of the Lords invaded, and ſuch things done by thoſe pretended Royaliſts, as no one formerly could have mentioned without coming under the Bann of the* Party: *So in the lower Houſe of Convocation they ſaw the like Invaſion of their own Rights by men of the ſame Leven; and a Power claim'd altogether inconſiſtent with the Preſidency of the Archbiſhop over his Synod; a Power abſurd in it ſelf, repugnant to the Synodal Rights enjoy'd and exercis'd by Metropolitans and their Comprovincials in all the purer Ages of the Church, and ſuch as theſe Gentlemen would have called downright Rebellion in former times, when they thought it their intereſt to be what they now call themſelves, but are not, true Sons of the Church. The Archbiſhop, and thoſe his worthy Brethren (to whom God has given Underſtanding as well as Integrity ſutable to the neceſſities of theſe times) ſee where the Springs of theſe unhappy Differences are: They know what care is taken (and for what deſign) to traduce the Governours of the Church, as Enemies and Betrayers of it, and to make zealous Churchmen and others believe, that there are ſome men who are better Patrons, and truer Friends of the Church than the Biſhops are. Time will ſhew theſe Men their Errour, and take off that Veil which yet lies over their Eyes. They have ſhewn the Church of* England, *by their behaviour this Seſſion, and adhering to thoſe who are plainly in the intereſt of* England, *and for our Conſtitution, what their notion is of Parties.*

By

By their management (which has gain'd them the universal esteem and applause of the People) they have set things upon the largest and best bottom to preserve the Church *and* State *of* England: *They who advise other Methods, and are for enlarging the* Bottom, *by taking in persons who have hitherto appeared disaffected to the Government, recommend Men to the King, who would be less hurtful to him, if they appeared arm'd against him in the Field, and take a ready and effectual method to bring in upon us* French *Slavery and Popery, which we shall yet be able to prevent, if the People of* England *will regard their true Interest, and be careful to bring those into Credit and Power, who love their Country, and cannot be reconcil'd to the Interest of our Enemies.*

BRITISH MUSEUM

Jura

Jura Populi Anglicani, &c.

THE Death of the King of *Spain*, and the alteration made in the Affairs of *Europe* by the Settlement of his Dominions, has cauſed a general Conſternation in all thoſe Countries which before had any apprehenſions of Danger from the growing Power of *France*. Among them all, none has more reaſon to be alarm'd than *England*, ſince, when we conſider our Situation, the Affairs of Commerce and Religion, and the Intereſt not only of the Abdicated Family, but of their great Protector likewiſe, among us; we muſt allow that no other Nation (unleſs perhaps we will except *Holland*) is more immediately affected, and likelier to feel the firſt dire Effects of this unhappy Conjunction.

This the People of *England* are generally ſenſible of; and 'tis to this ſenſe of their Danger, and the ſuſpicion they have entertain'd of a much greater Inclination to continue than deſtroy this Union of Power, that we are to aſcribe their Diſcontents, and the Reſentments they have expreſſed againſt their Repreſentatives, to a degree never before known in any Age of our Government.

'Twas in the midſt of theſe Clamours that eccho'd thro the Kingdom, and the univerſal Diſſatisfaction of the People at the Proceedings of the Houſe of Commons, that the five *Kentiſh* Gentlemen preſented this following Petition, agreed to by the Gentlemen, Juſtices of Peace, Grand Jury, and other Freeholders, at the General Quarter-Seſſions holden at *Maidſtone*, the 29*th* of *April*, in the 13*th* Year of his Majeſty's Reign.

" WE the Gentlemen, Juſtices of the Peace, Grand Jury,
" and other Freeholders at the General Quarter-Seſſions
" at *Maidſtone* in *Kent*, deeply concern'd at the dangerous Eſtate
" of this Kingdom, and of all *Europe*, and conſidering that the

" Fate

" Fate of us and our Poſterity depends upon the Wiſdom of our " Repreſentatives in Parliament, think our ſelves bound in Duty " humbly to lay before this Honourable Houſe the Conſequence " in this conjuncture, of your ſpeedy Reſolutions, and moſt ſin- " cere Endeavours to anſwer the Great Truſt repoſed in you by " your Country.

" And in regard, that from the experience of all Ages it is " manifeſt no Nation can be happy without Union, we hope that " no pretence whatſoever ſhall be able to create a Miſunder- " ſtanding between our ſelves, or the leaſt Diſtruſt of his Majeſty, " whoſe Great Actions for this Nation are writ in the Hearts of " his Subjects, and can never, without the blackeſt Ingratitude, " be forgot.

" We moſt humbly Implore this Honourable Houſe to have re- " gard to the Voice of the People, that our Religion and Safety " may be effectually provided for; that your Loyal Addreſſes " may be turn'd into Bills of Supply, and that his moſt Sacred " Majeſty (whoſe propitious and unblemiſh'd Reign over us we " pray God long to continue) may be inabled powerfully to aſſiſt " his Allies before it be too late.

And your Petitioners ſhall ever pray, *&c.*

Signed by all the Deputy-Lieutenants there preſent, above twenty Juſtices of the Peace, all the Grand Jury, and other Freeholders then there.

This Petition was offer'd to the Houſe on the 8*th* Day of *May*; the Gentlemen who deliver'd it, and own'd it at the Bar of the Houſe, were Mr. *William Colepepper*, Mr. *Thomas Colepepper*, Mr. *David Polhill*, Mr. *Juſtinian Champneyes*, and Mr. *William Hamilton*; for ſo I find all their Names written in the Votes, without the addition of *Eſq*; tho four of them were Juſtices of the Peace, and two Deputy-Lieutenants of the County. This was thought by ſome to be prudently contriv'd to leſſen the Credit of the Petition among People without doors, and to make others leſs eager to follow the Example of thoſe Gentlemen. Concerning the Petition the Houſe came to this Reſolution, That 'twas *Scandalous, Inſolent and Seditious, tending to deſtroy the Conſtitution of Parliament, and to ſubvert the eſtabliſhed Government of this Realm.* The five Gentlemen

Gentlemen they order'd to be taken into the Cuſtody of the Serjeant at Arms. The Treatment they had from him was very ſingular, and ſhew'd that they were under the high Diſpleaſure of the Houſe; for when he accidentally ſaw two of them talk together, he drew his Sword upon his Deputy for permitting it; and when upon one of thoſe Gentlemen's demanding a Copy of their Commitment, (which they reckon'd they had a Title to by virtue of the *Habeas Corpus* Act) and his refuſing it, the Gentleman ſaid he hop'd the Law would do him Juſtice, his Reply was, that *he car'd not a Fart for the Law*. The Reverence of the Law is fallen very low indeed, when one who has the Honour of being a Servant to the Houſe of Commons, can preſume to make ſo bold with it. In his Cuſtody they continu'd till the thirteenth of *May*, when he (contrary likewiſe to the *Habeas Corpus* Act) by an Order of the *Houſe of Commons*, and a Warrant iſſu'd out from the Speaker, deliver'd them Priſoners to his Majeſty's Priſon at the Gate-houſe, where they continu'd to the End of the Seſſion. Beſides this ſevere Puniſhment inflicted by themſelves, that they might ſhew their utmoſt Reſentment, and proceed to all the Severities in their Power, they at the ſame time reſolv'd upon an Addreſs to his Majeſty to put them out of the Commiſſions of the *Peace* and *Lieutenancy*.

The impriſoning of thoſe Gentlemen is the Fact which comes under my Conſideration. In order to handle this Subject fully, 'twill be neceſſary that I conſider theſe things: *Firſt*, What Power the Houſe of Commons has to impriſon. *Secondly*, The Subject's Right of petitioning. *Thirdly*, What Reaſons the Gentlemen, Juſtices of the Peace, and Grand Jury of the County of *Kent*, had to offer that Petition when they did.

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have been impriſon'd by them this Seſſion, to the Horror and Amazement of all thoſe who know the Rights and Liberties of the People of *England*, and therefore cannot but be concern'd to ſee them ſo miſerably infring'd. To prevent ſuch Acts of Power for the future, 'tis neceſſary that we ſhew that they are mere Acts of Power, and manifeſt Incroachments on the Liberties and Rights of the People. If there be any who ſtill retain the old fond Opinion they had of the Peoples Repreſentatives, and think that our Liberties are ſufficiently provided for when they are in the hands of ſuch Guardians, and that we can ſuffer no great Inconvenience by any Power which they are intruſted with; I would deſire them to enquire how Mr. *Buckley* (committed for ſhewing the Letters which he receiv'd from Sr. *Edw-rd Sey---r* and Mr. *Colſon*) and Mr. *Haſſam* (committed on Mr. *Samuel Shepherds* account) were treated by the Serjeant at Arms in their Confinement; and conſider whether ſuch Severities are not ſufficient to convince them, that the Peoples Repreſentatives (as they are call'd) are not to be complemented with more Power over the Liberties of the People, than our Laws and Conſtitution do allow them. Do not the fierce and rigorous Proſecutions which we have ſeen make it evident to us, that Men can fall under no Reſentment, no Rage or Malice, more outragious than that of a Party? Don't we ſee how regardleſs Men can be of their Reputation, what little and unbecoming Artifices they can ſtoop to, when they are intent upon breaking an oppoſite Faction? Is it fit then that in ſuch a diſorderly and divided ſtate, men ſhould be intruſted with exceſſive Power, who are inclin'd to make ſo ill uſe of it? If by our Conſtitution the Houſe of Commons were allow'd a Power to reſtrain the Freedom of our Perſons, as they ſhould think fit, for the good of the Community, the exerciſe of that Power, however rigorous and ſevere, would (if it were free from the biaſs and influence of Parties) be as patiently born from them, as any other hands whatſoever. But if by a Lawleſs and Arbitrary Power they invade that Freedom which an excellent Conſtitution entitles us to, 'tis impoſſible that a regard for the Perſons who afflict us ſhould reconcile us to the Suffering. 'Tis my buſineſs here to diſcover whether they have done ſo, or no. The propereſt method to do this, and to ſatisfy this firſt enquiry concerning their Power to impriſon, will be, Firſt, to examine how far our Laws have ſecured the Liberty and Freedom of our Perſons. Secondly, to examine whether

whether the Power exercis'd by the Commons be not repugnant to the Laws, and plainly deſtructive of our Conſtitution.

As to the firſt enquiry, 'tis evident that both the *Common* and *Statute Law* of this Land, as they ſuppoſe men to have an Inheritance in the Liberty of their Perſons, ſo have they taken all imaginable care to ſecure them in the Poſſeſſion of this Inheritance.

1*ſt*, As to the *Common Law*, we know what favour ſhe ſhews to the Liberty of our Perſons. This was ſo great, that formerly ſhe ſuffered none to be impriſon'd, but for Force, and things done againſt the Peace. Force indeed ſhe (being the Guardian and Preſerver of the Land) could not but abhor; thoſe therefore that committed it, ſhe accounted her Capital Enemies, and did ſubject their Bodies to Impriſonment. In all other caſes ſhe protected them from this Reſtraint. This was our Conſtitution in the time of the *Saxon* Kings, and a long while after, till the 35*th* year of *Hen.* 3. who was the eighth King from the Conqueſt: Becauſe Bailiffs would not render Accounts to their Lords, 'twas then enacted by the Statute of *Marlebridg*, cap. 24. that their Bodies ſhould be attach'd. Had this Law been a little unreaſonable, 'tis no great wonder that it ſhould paſs at that time, conſidering the weakneſs of the King, and the Power of the Lords, in whoſe favour 'twas made. We may remark concerning it, that the firſt Act to reſtrain the Subjects Liberty was procured by thoſe Lords who forced a Charter from the King to confirm their own Liberties. Three Reigns after this (23 *Edw.* 3. 17.) becauſe men took no care to pay their Debts, 'twas provided by another *Statute* that their Bodies ſhould be attach'd. Before theſe Statutes, as I ſaid, no man's Body was ſubject to be taken or impriſon'd otherwiſe than as aforeſaid. As the Moderation of our Anceſtors in not enacting any ſuch Laws, in all the Ages that went before, demonſtrates the great regard they had for Liberty; ſo did the Courſe and Practice of the Law afterwards fully ſhew how great a Puniſhment they reckoned to have it reſtrain'd, as by thoſe Statutes. Before the Reign of K. *James* I. 'twas allow'd, that he who died in Priſon diſcharged the Debt, how great ſoever it was, for which he was committed. The reaſon was, becauſe they thought Impriſonment a Puniſhment ſo great, that no other ſatisfaction ought to be demanded after it. 'Twas the opinion they had of the greatneſs of the Puniſhment, that made our merciful Forefathers bear with men in uſing ſuch Acts of Force to enlarge themſelves,

as are not now allow'd. The Statute *de frangentibus Priſonam*, made in the firſt year of *Edward* the Second, enacts that *no one ſhall undergo Judgment of Life or Members, for breaking of Priſon alone, unleſs the Cauſe for which the Perſon is impriſon'd require ſuch a Judgment.* And the Mirrour of Juſtices, which was writ before this King's Reign, where it reckons up the Abuſions of the Common Law *, tells us, *That 'tis an Abuſe to hold an Eſcape out of Priſon, or the Breach of the Goal, to be a mortal Offence, FOR AS MUCH AS ONE IS WARRANTED TO DO IT BY THE LAW OF NATURE.* All this cannot be wonder'd at, when we conſider how great an evil Impriſonment is reckon'd, and that 'tis in Law called *Civil Death: Perdit Domum, Familiam, Vicinos, Patriam*; *he loſes his Houſe, his Family, his Wife, his Children, his Neighbours, his Country, and is condemned to live among wretched and wicked Men.* For this reaſon it is that as a Man, if he be threatned to be kill'd, may avoid a Feofment †, Gift of Goods, *&c.* So it is, if he be threatned to be impriſoned, or kept in Dureſs; that being reckoned to be a Civil Death, any Specialty or Obligation made by him is null in Law: and he may avoid the Action brought upon ſuch Specialty, by pleading that it was made by Dureſs.

As the *Common Law* has ſhewn a great regard, ſo *ſecondly* has the *STATUTE LAW* of this Land abundantly provided for the *Liberty* of our Perſons. This is evident from many Acts of Parliament. The firſt that I ſhall take notice of is the *Grand Charter* of the Liberties of *England*, firſt granted in the 17*th* year of K. *John*, and renewed twice in the Reign of King *Henry* the Third. By that Charter it is provided, that *no Freeman ſhall be taken or impriſon'd, unleſs it be by Judgment of his Peers, or by the Laws of the Land*: that is, by *Jurors* who are his *Peers*; or by due *Proceſs of Law*. That this is the meaning of thoſe Words *per Legem terræ*, or *Law of the Land*, will plainly appear from divers other Statutes which explain thoſe Words. In the 25 *Ed.* 3. c. 4. we find them thus explained in theſe Words: *Whereas it is contained in the Great Charter of the Franchiſes of* England, *that no Freeman be impriſon'd, or put out of his Freehold, nor of his Franchiſe,*

* *Mir. of Juſtic. c.* 5. *Sect.* 1.
† 39 *H.* 1. 65, *&c.*

nor

nor Free Cuſtom, unleſs it be by the LAW OF THE LAND, it is accorded, aſſented, and eſtabliſh'd, that from henceforth none ſhall be taken by Petition or Suggeſtion made unto our Lord the King, or to his Council, unleſs it be by Indictment or Preſentment of his good and lawful People, of the ſame Neighbourhood where ſuch Deed was done, in due manner, or BY PROCESS MADE BY WRIT ORIGINAL AT THE COMMON LAW; and that none be out of his Franchiſes or Freehold, unleſs he be duly brought in to anſwer, and forejudg'd of the ſame by COURSE OF LAW: and if any thing be done againſt the ſame, it ſhall be redreſs'd and held for null. The 28th of *Edw.* 3. is very direct to this purpoſe: there 'tis enacted, *That no Man, of what Eſtate or Condition he be, ſhall be put out of his Lands or Tenements, nor taken nor impriſon'd,* &c. *without he be brought in to anſwer by due PROCESS OF LAW.* 36. *Ed.* 3. *Rot. Parl. Num.* 9. Amongſt the Petitions of the Commons, one of them, being tranſlated out of *French* into *Engliſh*, is thus; *Firſt, That the Great Charter, and the Charter of the Foreſt, and the other Statutes made in his Time, and the Time of his Progenitors, for the Profit of him and his Commonwealth, be well and firmly kept and put in Execution, without putting Diſturbance, or making Arreſt, contrary to them, by ſpecial Command, or in any other.* The Anſwer to this Petition, which makes it an Act of Parliament, is, *Our Lord the King by the Aſſent of the Prelates, Dukes, Earls, Barons, and the Commonalty, hath ordain'd and eſtabliſh'd that the ſaid Charters and Statutes be held and put in Execution according to the ſaid Petition; which is, that no Arreſt ſhould be made contrary to the Statutes, by ſpecial Command.*

This explains the matter fully, and is of as great force as if it were printed; for the *Parl. Roll* is the true Warrant of an Act, and many are omitted out of the Books that are extant.

36 *Ed.* 3. *Rot. Parl. Num.* 30. explains it further; for there the Petition is, *Whereas it is contained in the Grand Charter, and other Statutes, that none be taken or impriſon'd by ſpecial Command, without Indictment, or other due Proceſs to be made by Law; yet oftentimes it hath been and ſtill is, that many are hindered, taken and impriſon'd without INDICTMENT, or OTHER PROCESS to be made BY THE LAW upon them, as well of things done out of the Foreſt of the King, as for other things: that it would therefore pleaſe our ſaid Lord to command thoſe to be deliver'd who are taken by ſpecial Command, againſt the Form of the Charters and Statutes aforeſaid.*

ſaid. The Anſwer is, *The King is pleas'd if any Man find himſelf griev'd, that he come and make his Complaint, and Right ſhall be done unto him.* 37 *Edw.* 3. *c.* 18. agreeth in Subſtance, when it ſaith, *Though it be contain'd in the Grand Charter, that no Man be impriſon'd, nor put out of his Freehold without Proceſs; nevertheleſs divers People make falſe Suggeſtions to the King himſelf, as well for Malice as otherwiſe, whereat the King is often griev'd, and divers in the Realm put in Damage, againſt the Form of the ſaid Charter: wherefore 'tis order'd that all they who make ſuch Suggeſtions, be ſent with the Suggeſtions before the Chancellor, Treaſurer and the Grand Council, and that they there find Surety to purſue their Suggeſtions, and incur the ſame pain that the other ſhould have had, (if he were attainted) in caſe that their Suggeſtions be found evil, and that then Proceſs of the Law be made againſt them without being taken and impriſon'd againſt the Form of the ſaid Charter and other Statutes.* Here the Law of the Land in the *Great Charter* is explain'd to be *Proceſs of the Law.*

From what I have here delivered, it appears what care both the *Common* and *Statute Law* have taken of the *Liberty* of our *Perſons*; that the former abhorr'd Impriſonment, and never allow'd it, unleſs it was when men had been guilty of *Force*, and render'd themſelves Enemies to the Community; and that the latter has frequently enjoin'd that it ſhall not be inflicted, unleſs it be by *Indictment*, or ſuch *due Proceſs* as the Law requires. What we have here ſaid will aſſiſt us in

The ſecond thing propos'd, which was to enquire whether the Power exercis'd by the *Houſe* of *Commons* be not an Invaſion of our Legal Rights, and tends not to ſubvert even our Conſtitution? The Laws are called (*Edw. 6. Fol.* 36.) *The great Inheritance, and the Inheritance of Inheritances, without which a man can have no Inheritance.* The greateſt Inheritance a Man hath is the Liberty of his Perſon, for all others are neceſſary and ſubſervient to it. If then the *H——ſe* of *Com——ns* have invaded that fundamental Liberty of our Perſons, which by *Magna Charta*, and ſeveral other Statutes, as well as the moſt antient Cuſtoms and Laws of this Land, we are entitul'd to, this will inform us how far the Powers exercis'd by them have deſtroy'd our Legal Rights. *Magna Charta* ſays, that *no Freeman ſhall be taken or impriſon'd, but by the judgment of his Peers, or the Law of the Land:* But 'tis certain that Men impriſon'd by them underwent no Judgment of their Peers, were not committed by legal Proceſs, or by any Law that

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we know in this Land. I know 'twill be ſaid, that by the words of *Magna Charta* we are to underſtand not *legal Proceſs*, but the *Law of the Land* generally, and that the words extend to all the Laws in the Realm. Since then there are Laws and Cuſtoms in Parliament, and by thoſe Cuſtoms Impriſonment is allow'd, 'twill be ſaid in favour of the *Houſe* of *Commons*, that they in committing People do not neceſſarily deſtroy that Right which we have by *Magna Charta*. 'Tis true, there are Rules and Cuſtoms in Parliament, and by thoſe Cuſtoms they have a Power to impriſon: but that is a Power which extends to their own Members; ſuch a Power is neceſſary within their Society, becauſe without it 'twould be impoſſible to keep the Members of it to ſuch Rules and Orders as muſt neceſſarily be obſerved by ſo great a Body of Men, engaged in ſo weighty and important Buſineſs. Confinement here is no violation of the Right men have to the Liberty of their Perſons by *Magna Charta*; that Right they all give up, and ſubmit to the Rules of the Houſe, when they make themſelves Members of it. It muſt be confeſſed that this Power has been extended farther to Perſons who are not Members, as in caſes of breach of Privilege, and Contempt. I ſhall not here take notice of the riſe of this Power, and how great a Grievance the exerciſe of it has been to the People of this Land; but muſt obſerve, that if a Liberty has been taken of confining thoſe who offer'd violence to *Members* in their own Perſons, or in their Servants or Eſtate, becauſe ſuch Moleſtations, if allow'd, might give them too great diſturbance, and ruin the Buſineſs of the Publick; yet it muſt not from hence be inferr'd that the *Houſe* of *Commons* has an abſolute or unlimited Power to impriſon whom, and for what cauſe they pleaſe. If there are ſome Confinements order'd by that Houſe, which are not, 'tis ſure there may be ſome which are repugnant to *Magna Charta*; otherwiſe *Magna Charta*, and all the other Acts which deſigned to ſecure our Liberties from the Invaſions of our Kings, whoſe Subjects we are, and to whom we owe Allegiance, have left us expos'd to the Arbitrary Will of our *Fellow-Commoners*, who (thanks be to God) have yet no ſuch Rule or Dominion over us. Whether they have invaded our Rights contrary to *Magna Charta*, and in ſuch inſtances as are a Subverſion of our Conſtitution, will be evident to us, if we look over the Catalogue of their Priſoners, and examine the cauſe of their Commitment. The five *Kentiſh* Gentlemen, whoſe Caſe I am now con-

conſidering, were impriſon'd for a Fact no more prohibited by the Laws of this Land, than praying for the King, or that God would direct the Conſultations of the Parliament, to the advancement of the Safety, Honour and Welfare of our Soveraign and his Kingdoms. It would be too tedious to deſcend to particulars, of the great number which might here be taken notice of, as pertinent to my purpoſe, I ſhall mention only two, Mr. *Paſchal* and Mr. *Whitacre*. The former was ſent to the Tower, and kept there to the end of the Seſſions, for not giving in his Accounts after the manner preſcrib'd by the Commiſſioners of Accounts, purſuant to an Act of Parliament. The latter was committed, and continued likewiſe in his Confinement till the End of the Seſſion, for being faulty (as the Houſe of Commons thought) in the diſcharge of his Office, in an inſtance of taking Bail. After his Confinement, his Accounts which he had paſſed, were examined, and they were made another Charge againſt him. Whether thoſe Gentlemen were faulty, or no, it concerns not me here to enquire. Mr. *Paſchal* has printed his Caſe, and 'tis a very hard one; the Crime for which he was ſent to the Tower, was for not doing what was not in his power to do. But tho he and others were guilty, 'tis certain that the puniſhing of them after that manner is nevertheleſs an Injury to the Publick. If Mr. *Paſchal* was guilty of Contempt, and puniſhed thus for not obeying an *Act* made in the Seſſion of another *Parliament*, and Mr. *Whitacre* for being faulty in the diſcharge of his Office, may not they for the ſame reaſon charge all with Contempt who diſobey Acts of Parliament, or are faulty in the execution of their Offices, and puniſh them after the ſame manner? Either they claim ſuch a Power as this, or they do not: If they do not claim ſuch a Power, as the Right of the Commons of *England*, then they own that they have been injurious to thoſe Gentlemen in impriſoning them, and deſtroying that great and fundamental Right which they have to the Liberty of their Perſons. If they do claim ſuch a Power, they may ſeem to aſſume a Power which overthrows our whole Conſtitution. This will be manifeſt, when we conſider the ſeveral Inſtances wherein it ſubverts the Laws, the Rights and Liberties of the People.

Firſt, It may be thought an Incroachment on the Power Legiſlative: for where the Commons are pleaſed to inflict ſuch a Puniſhment for the violation of a Statute, as is not mention'd in the Statute, and was never deſigned by the Legiſlators, there they may

may ſeem to aſſume an Authority at leaſt equal to that of the Legiſlative. To create a new Puniſhment, and ſuperadd it to a Law, may be allowed to be the Act of a Power equal to that which made it; and in the preſent caſe ſome may reckon it in ſome ſenſe greater, ſince that Addition makes it a Law with a Puniſhment *ex poſt facto*, which is a Power inconſiſtent with the Freedom of a People, and therefore is never made uſe of by our Legiſlators.

Secondly, It may be deem'd an Incroachment on the Power and Rights of the King. He by our Conſtitution has the ſupreme and ſole executive Power: He is *Caput & Salus Reipublicæ:* The Laws are his, and the Execution of them, wherein the Safety and Freedom of his People conſiſts, are committed to him, and thoſe who derive their Authority from him. Wherever therefore any part of his People take upon them to inflict Puniſhments without being authorized by him, or, which is the very ſame thing, by his Laws, ſome may think that his Rights are thereby invaded, and his Majeſty leſſened, not only by that Invaſion, but likewiſe by his being thereby made, inſtead of a Ruler of a brave and free People, a Titular King of poor and contemptible Slaves.

Thirdly, Some may account this an Invaſion of the Rights and Liberties of the Kingdom, and ſuch a one perhaps as deſtroys Freedom, and introduces downright Slavery. It may be worth *Engliſh*-mens while to conſider, whether they can form to themſelves any other Notion of a *State* of *Freedom* and *Slavery*, than that in the former Men are governed by Laws made by their *Repreſentatives*, and are liable to no Puniſhments but what are preſcrib'd by the Laws of that State; and in the latter, that they have no certain Rule to walk by, but are ſubject to the mere Will of one or more who claim a Power and Dominion over them. If they find theſe Notions to be true, they will do well to conſider again, whether they can avoid making this Inference, That they who aſſume a Power to puniſh a People who live under the direction of the Laws, without a Rule or Law, deſtroy the Rights and Liberties of the People, take away their Freedom, and reduce them to a perfect State of Slavery.

Againſt what I have here ſaid 'tis, I know, generally objected, That *Juſtices* of the *Peace*, *Judges*, and others, are allow'd to impriſon Freemen, without being impeach'd of deſtroying that Liberty which they enjoy by *Magna Charta*, and the *Common Law* of this Land: Why then theſe Outcries againſt the *Honourable*

Houſe of Commons? The Anſwer is very plain and eaſy: The former are Officers appointed by the King, who is inveſted with the whole executive Power, to preſerve the Peace of the Kingdom; and the latter are commiſſioned to do the ſame, and to preſide in his Courts, to adminiſter Juſtice to his Subjects, which 'tis impoſſible for them to do without having a Power given them to confine evil and rebellious Subjects. The lower Houſe of Parliament is no Court, has no need of ſuch a Power, being call'd by the King to aſſiſt him with their Counſel in Affairs of the greateſt moment and weight, to bear a part in the Legiſlature, and to repreſent the Grievances of the Nation, and deſire to have them redreſſed; but not to redreſs them themſelves, by taking upon them to puniſh Offenders. If Judges, or Juſtices of the Peace, or others who are intruſted with this Power, exceed their Commiſſion, and are oppreſſive and injurious to the Subject, there is a ſuperiour Juriſdiction to appeal to for ſatisfaction, and Laws to determine whether Injury has been done or no: But if a Houſe of Commons will puniſh thus without Law, there is no Authority or Power on Earth, from which Relief may be had by Appeal, which in our Conſtitution is a very good reaſon againſt their having ſuch a Power; for the Lord Chief Juſtice *Huſſey* tells * us, That Sir *John Markham* told King *Edward* IV. that he could not arreſt a Man, either for Treaſon or Felony, as a Subject might, becauſe, that if the King did wrong, the Party could not have his Action againſt him. It may be farther urg'd, that as Judges having a Power to ſettle and determine Property, is a reaſon why they ſhould have a Power to impriſon, becauſe the one is impracticable without the other: So the Houſe of Commons not having a Power to determine concerning Property, is a reaſon why they ſhould not have a Power to impriſon. *Cui non convenit minus, ei non majus convenit*, is a Maxim among the Logicians, and is a good Argument in the preſent Caſe. If the Houſe of Commons have no Power over our Goods, then *a fortiori* not over our Perſons to impriſon them, becauſe they are much more valuable than either Goods or Lands. This *Chriſt* himſelf declares, when he tells us, that *the Body is more than Raiment*, where by *Raiment* the *Canoniſts* underſtand all outward things whatſoever. Our Laws alſo make this clear, and give the preference to the Body. 'Tis

* 1 Hen. 7. Fol. 4.

a Rule in Law, that *Corporalis injuria non recipit æſtimationem è futuro*: ſo as if the Queſtion be not for a Wrong to the Perſon, the Law will not compel him to ſuſtain it, and afterwards accept a Remedy; for the Law holds no damage a ſufficient Recompence for a Wrong which is corporal. There are Caſes in Law that prove this Rule. If one menace me in my Goods, or that he will burn the Evidence of my Land which he hath in his Cuſtody, unleſs I will make unto him a Bond, there I cannot avoid the Bond by pleading of this Menace. But if he reſtrains my Perſon, or threatens me with Battery, or with burning my Houſe, which is a Protection for my Perſon, or with burning an Inſtrument of Manumiſſion, which is an evidence of my Enfranchiſement; upon theſe Menaces I ſhall avoid the Bond by Plea. So if a Treſpaſſer drive my Beaſt over another man's Ground, and I purſue to reſcue it there, I am a Treſpaſſer to him on whoſe Ground I am: But if a Man aſſault my Perſon, and I for my Safety fly over into another man's Ground, there I am no Treſpaſſer to him: for *quod quis in tuitione ſui corporis fecerit, jure id feciſſe exiſtimatur*; What a Man does in defence of his Perſon, he is reckoned to do it lawfully. Nay, which is more, the Common Law did favour the Liberty, not only of Freemen, but even of the Perſons of Bondmen and Villains, who have no Right of Property in Lands or Goods, as Freemen have. The Lord by the Law could not maim his Villain; nay, if he commanded another to beat him, and he did it, the Villain ſhould have his Action of Battery for it againſt him. If the Lord made a Leaſe for Years to his Villain, if he pleaded with him, if he tender'd him to be a Champion for him in a Writ of Right, any of theſe Acts, and many others, were in the Law Enfranchiſements, and made thoſe Villains Freemen. From all which it appears, that the Law has a greater regard to our Perſons than Eſtates; which, as I ſaid, is a good Argument why the Houſe of Commons, who have nothing to do in regulating or determining our other Properties, ſhould not have a Power over the Liberty of our Perſons.

Sir *John Forteſcue*, the Learned Chancellor to King *Henry* VI. writing (*de Dom. Polit. & Regal.*) of this Kingdom, ſaith, *Regnum illud in omnibus Nationum & Regum temporibus, iiſdem quibus nunc regitur legibus & conſuetudinibus regebatur.* This Saying will not ſute our Times; we cannot ſay, That the *Laws* and *Cuſtoms* which we are govern'd by, are the very ſame with thoſe by which

this Kingdom was govern'd in the Times of all the former Kings, and the ſeveral Nations that came in hither. The Power aſſum'd by the Houſe of Commons in executing Laws, and impriſoning Men, is a very new thing, and makes our preſent State very different from our antient Conſtitution. The laſt Year it had its beginning, when Sir *Ric——d Lev——g* was ſent to the Tower, and kept there to the end of the Seſſion, for telling a Friend ſome things that were ſpoken by ſome of the other *Iriſh* Commiſſioners, in their private Converſation. This Commitment, however unreaſonable it ſeem'd to ſome, who knew that he was leſs guilty of any Breach of Privilege than if he had ſpoken reflectingly of a Member of Parliament's Horſe, yet was not wonder'd at by others who conſidered the Reſuming Bill it ſelf, knew for what end 'twas ſet on foot, and that they were reſolv'd to ſtrike a Terror on People, and frighten 'em from ſaying any thing that might endanger that Bill. That Power which began the laſt Year, has had a mighty growth this Seſſion; and if it grow on at the ſame rate, 'tis eaſy to ſee what our Conſtitution will come to in a very little time. *Old Ways are the beſt Ways*, is a Saying that has been formerly written on the Walls of the *Houſe* of *Commons*: I could wiſh that 'twere now written both there, and in the Hearts of the Members, there never was ſo great occaſion for it; for if theſe Innovators be ſuffer'd to drive on thus furiouſly, many who adhere to their Faction without ſeeing their Deſigns, will make themſelves Parties in bringing inſenſibly a Calamity on this Land, which they will not be able to remedy by any after-Efforts. A very little Reflection will ſhew us how this may be. Should there be any Deſign to alter our Conſtitution or preſent Settlement, one ready way is to carry things high in the Houſe of Commons, and to make the Orders and Reſolutions there as grievous to the People as poſſible, that they being enrag'd at their Domination and rigorous Proceedings, may be the better inclin'd to run into another Extreme. We know what alteration they by their Acts of Power have already made in the Opinions and Affections of People; and the danger which ſome fear is, that, if they go much farther, they will give too many a Surfeit, and make them nauſeate the *Commons*, who ought to be, what they reckon themſelves, *Truſtees* and *Guardians* of the Liberties of *England*. It may therefore well become good men, who love the Happineſs, Tranquillity and Liberty of their Country, to reflect ſeriouſly, and conſider with them

themſelves whether this may not be the deſign of ſome who now pretend to be mighty Sticklers and Advocates for Liberty. There is another good reaſon why men ſhould be jealous of, and make it their buſineſs to check this rampant growing Power of the Lower Houſe. 'Tis the general Voice of the People throughout this Kingdom, as we are inform'd from all the Corners of it, that Gold has carried on a great Negotiation among us. Some are of opinion, and I muſt own not without a great deal of reaſon, that the continual Clamours which have been artificially, but upon too weak grounds raiſed, and the outragious and unreaſonable Proceedings which we have ſeen, are great Confirmations of the truth of what has been reported. This is moſt certain, that where *corrupt Orators* (to ſpeak in the language of a very experienced Doctor *) *bring their Subtilty and Eloquence to Market*, they muſt follow the Inſtructions of him whoſe Pay they receive, they muſt ſet afoot Factions and Brigues, bring all the Confuſion they can into their native Country, pull down the Fence of the Laws, deſtroy the Credit and Intereſt of thoſe who are ableſt and moſt inclin'd to oppoſe his Deſigns, and in ſhort, do whatever he requires of them. If among us there be any ſuch corrupt Members, 'tis plain that to make themſelves the more conſiderable, and raiſe the Price of their Voices, they muſt think it their buſineſs to ſtudy Ways and Means to afflict their Fellow-Subjects, to embaraſs Affairs, and bring Confuſion and Diſorder into the State. One ready way therefore to defeat the Deſigns of ſuch men, will be to keep them from running into any Exceſſes of Lawleſs and Arbitrary Power, and tie them to the ſame Rules that directed the Actions of their wiſe and juſt Predeceſſors. As keeping things in this temperament, and adhering to our Conſtitution, will be a means to defeat the meaſures of a foreign Tyrant; ſo will it (in ſome mens opinion) put an end to the Fears and Calamities of a Tyrannick Slavery brought upon us by Fellow-Subjects at home. Tyrannick Slavery did I ſay? Some may call it ſo, when in a Free State, where the whole Legiſlative only has a Power to ſet down what Puniſhment ſhall be inflicted on the ſeveral Tranſgreſſions that are committed, a Part of it aſſumes a Power to inflict one of the ſevereſt Puniſhments: When a few who are choſen to be Truſtees and Guardians of the People's Liberties, bring the People

* *Diſcourſe on the Publick Revenues and Trade of* England, Part II. pag. 292.

under

under their abſolute Power, and compel them to that which is againſt the Right of their Freedom. To be free from ſuch Force is the only Security men have of their Preſervation, and Reaſon bids them to look on thoſe as Enemies to their Preſervation, who would take away that Freedom which is the Fence to it; and ſo conclude that they have a Will and Deſign to take away every thing elſe, ſince that Freedom is the Foundation of all the reſt.

From what I have here delivered concerning the Power of impriſoning in the Lower Houſe, 'tis evident, I think, that if Petitioning, as the *Kentiſh* Gentlemen did, had been an illegal Act, and the Puniſhment enjoin'd by the Law had been Impriſonment, yet it belong'd not to them to inflict that Puniſhment, but to make application (as they have always done heretofore) to have the Law executed againſt them. But if what they did was ſtrictly agreeable to Law, this will make their Commitment a greater Violation of the Rights of the Community. That it was ſo, will appear, when we conſider

The ſecond thing propos'd, *the Subject's Right of Petitioning*. This Right I take to be as large and ample a one, and what will as little bear controverting, as any thing that we can think of, ſince 'tis juſtified by the Law of Nature, the Practice of all States in the World, and is allowed by the Laws of this Land.

'Tis certain that nothing can be more agreeable to Nature, and a plainer Dictate of Reaſon, than that thoſe who apprehend themſelves aggriev'd be allow'd a liberty to approach thoſe by Petition who know their Grievances, or perhaps are the Authors of them, and conſequently able to redreſs them. When Men enter'd firſt into Society, and gave up that Right which they had to ſecure themſelves in the State of Nature, 'tis manifeſt that they did it for the preſervation of Property, which is the end of Government. This neceſſarily ſuppoſes, and indeed requires, that People ſhould have Property, without which they muſt be ſuppos'd to loſe that by entring into Society, which was the end for which they enter'd into it. If men enter'd into Society to preſerve it, and therefore are ſo entitled to it, that (as a very Learned and Ingenious Author tells us *) *The ſupreme Power cannot take from any man any part of his Property without his own conſent*;

* *The Author of two Treatiſes of Government*, pag. 277.

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Can any Abſurdity be ſo groſs, as to imagin, that men gave up their Right to pray for Redreſs, if they thought themſelves injur'd in their Properties? Or that the ſupreme Power may hinder them to pray for that which they have not a right to deprive them of? Wherever therefore any Government is eſtabliſhed, there the natural Right which People had to ſecure what was their own, muſt be ſo far at leaſt continued, as to allow them a liberty to petition for what they think their Right, becauſe this is a Privilege which they could not give up, when they enter'd into Society. And where there has been no Government but the Prince's Will, even there this Right has ſeemed ſo natural and agreeable to Reaſon, that it has not been denied. This might be ſeen in all the Arbitrary Governments of the World. In the *Roman* Empire *Julius Ceſar*, when he was in the heigth of his Power, and made himſelf *Perpetual Dictator*, permitted the People to repreſent the Hardſhips that were put upon them, and pray for redreſs. And in the Reign of other Princes who exercis'd a Deſpotick Power, whilſt the *Lex Regia* prevail'd, *reſcribere Principi*, to petition the Prince, and ſet forth their Grievances, was allowed their Subjects as the natural Right of Mankind.

If this Right be natural, the People of *England*, who have loſt as little by entring into Society as any others, muſt have as juſt and ample a Claim to it as any Nation in the World. That they have a Right to repreſent their Sufferings, and pray for a Relaxation of them, is evident from the Opinions of our Sages of the Law, from what our Kings have permitted and declared, and what has deen declared and enacted in Parliament.

Our Books are very clear in this matter. My Lord Chief Juſtice *Hobbart* tells * us, That 'tis lawful for any Subject to petition the King for redreſs in an humble manner; for (ſays he) *Acceſs to the Soveraign muſt not be ſhut up in caſe of the Subject's diſtreſs.* This Right was fully prov'd by the Learned Counſel at the Trial of the ſeven Biſhops, and allowed by the Judges. It was one of the Crimes for which the *Spencers* were baniſhed, that they hinder'd the King from receiving and anſwering Petitions from Great Men and others. And one Article againſt the Lord *Strafford* was, that he iſſued out a Proclamation and Warrant of reſtraint to inhibit

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* Wrenham's *Caſe*, vet. Mag. Chart. Exil. Hugon. de Spencer.

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the King's Subjects to come to the Fountain their Soveraign, to deliver their Complaints of Wrongs and Oppreſſions *.

As the Sages of the Law have told us, that 'tis our undoubted Right, ſo have our Kings in all Ages permitted us by Petition to inform them of our Grievances. In the Reigns of King *Edw.* II. and King *Edw.* III. ſuch Petitions were frequent, and then even *Ireland* was allow'd to repreſent their Grievances †, and petition for a Parliament.

Doctor *Burnet* ||, the Learned Biſhop of *Salisbury*, informs us, That King *Henry* VIII. told his Subjects, when in Arms againſt him in *Yorkſhire*, that they ought not to have rebell'd, but to have applied themſelves to him by Petition.

King *James* I. by a Proclamation publiſh'd in the 11*th* Year of his Reign, begins thus: *The Complaints lately exhibited to us by certain Noblemen and others of our Kingdom of* Ireland, *ſuggeſting Diſorders and Abuſes, as well in the Proceedings of the late begun Parliament, as in the Martial and Civil Government of the Kingdom, we did receive with all extraordinary Grace and Favour.* And by another ** Proclamation he declares, that *'twas the Right of his Subjects to make their immediate Addreſſes to him by Petition.* And in another †† he tells his People, that *his own, and the Ears of his Privy Council did ſtill continue open to the juſt Complaints of his People ——And that they were not confin'd to Times and Meetings in Parliament, nor reſtrain'd to particular Grievances.*

It appears by the Lords Journals in the Year 1640. that the Houſe of Lords both Spiritual and Temporal, *nemine contradicente*, voted Thanks to thoſe Lords who petitioned the King at *York* to call a Parliament: And that King by his Declaration, 1644. declared his Royal Will and Pleaſure, that all his loving Subjects, who have any juſt cauſe to preſent or complain of any Grievances or Oppreſſions, may freely addreſs themſelves by their humble Petitions to his Sacred Majeſty, who will graciouſly hear their Complaints.

On Wedneſday the 27*th* of *October*, 1680. it was reſolv'd in the Houſe of Commons, *nemine contradicente*, *That it is and*

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* Ruſhworth's *Collect.* 721. † Clauſ. 10. E. 2. M. 28. pro communitate Hiberniæ. || *Hiſt. Reformat.* Part I. p. 231. ** Proclam. dat. 10 *July*, 19 Jac. †† Proclam. dat. 14 *Febr.* 20 Jac.

EVER

EVER hath been the undoubted Right of the Subjects of England *to Petition the King for the calling and ſitting of Parliaments, and redreſſing of Grievances.* 'Twas then likewiſe reſolv'd, *nemine contradicente, That to traduce ſuch Petitioning as a violation of Duty, and to repreſent it to his Majeſty as tumultuous and ſeditious, is to betray the Liberty of the Subject, and contribute to the Deſign of ſubverting the antient legal Conſtitution of this Kingdom, and introducing Arbitrary Power.* On the Friday following (as we find in the ſame Journal) it appearing to the Houſe upon the examination of ſeveral Witneſſes at the Bar thereof, upon the evidence againſt Sir *Francis Withins*, as well as upon his own Confeſſion, that he had preſented an Addreſs to his Majeſty expreſſing an Abhorrency to petition his Majeſty for the calling and ſitting of Parliaments; 'twas *reſolv'd, that Sir* Francis Withins *by promoting and preſenting to his Majeſty an Addreſs expreſſing his ſaid Abhorrency, hath betrayed the undoubted Rights of the Subjects of* England. 'Twas moreover order'd, that he ſhould be expell'd the Houſe, and that he ſhould receive his Sentence upon his Knees.

This Right of the Subject to petition is farther confirm'd by the Statute Law of this Land, particularly in an Act made in the thirteenth year of K. *Charles the Second*, the enacting Part of which I will here at large ſet down, becauſe 'tis a plain Declaration of the Subject's Right in the caſe of the Petition now under our Conſideration.

" Be it enacted *&c.* That no Perſon or Perſons whatſoever " ſhall from and after the firſt of *Auguſt*, 1661. ſollicite, labour " or procure the getting of Hands, or other Conſent, of any " Perſons above the Number of twenty or more, to any Petition, Complaint, Remonſtrance, Declaration, or other Addreſs " to the King, or both or either Houſes of Parliament, *FOR " ALTERATION OF MATTERS ESTABLISHED BY LAW IN CHURCH OR STATE*, unleſs the " Matter thereof have firſt been conſented to, and order'd by " three or more Juſtices of the County, or by the major Part of " the Grand Jury of the County or Diviſion of the County where " the ſame ſhall ariſe, at their publick Aſſizes, or General Quarter Seſſions; or if ariſing in *London*, by the Lord Mayor, Aldermen, or Commons in Common Council aſſembled: and that " no Perſon or Perſons whatſoever ſhall repair to his Majeſty, " or both or either Houſes of Parliament, upon pretence of

 " preſenting,

" preſenting, or delivering any Petition, Complaint, Remon-
" ſtrance, or Declaration, or other Addreſſes, accompany'd with
" exceſſive Numbers of People, not at any one time above the
" Number of ten Perſons, upon pain of incurring a Penalty not
" exceeding the Sum of one hundred Pounds in Mony, and three
" Months Impriſonment.

" Provided always, that this Act, or any thing therein contain'd,
" ſhall not be conſtru'd to extend to debar or hinder any Perſon
" or Perſons, not exceeding the Number of ten aforeſaid, to pre-
" ſent *ANY PUBLICK OR PRIVATE GRIE-*
" *VANCE OR COMPLAINT TO ANY MEM-*
" *BER OR MEMBERS OF PARLIAMENT*, after
" his Election, and during the Continuance of the Parliament,
" or to the King's Majeſty, for any Remedy to be thereunto
" had. ——

Concerning this Statute we may obſerve four things: Firſt, That it allows (as Mr. Serjeant *Levins* obſerv'd in the Trial * of the ſeven Biſhops, and we are taught by ſeveral other good Authorities †) that by the Law of the Land before, it was the ſettl'd and undoubted Right of the Subjects of *England*, to apply themſelves to the King, or either or both Houſes of Parliament, by Petition, to have their Grievances redreſs'd. Secondly, That where it limits this Power of the Subject, and requires that the Petition ſhall be conſented to and order'd by three or more Juſtices of the County, or by the major Part of the Grand Jury of the County, or Diviſion of the County where the ſame Matter ſhall ariſe, or by the Lord Mayor, Aldermen, or Commons in Common Council aſſembled, if it ariſe in *London*; 'tis only in a particular Caſe where the Addreſs is for *Alteration of Matters eſtabliſh'd by Law in Church or State*. Thirdly, That even in this Caſe the Concurrence of thoſe Perſons is not requir'd, unleſs it be where there are more than twenty Hands to the Petition. Fourthly, That the Act extends not to Grievances or Complaints either publick or private, but that they may be preſented to the King or Parliament, without any of thoſe previous Formalities, provided that the Petition or Addreſs be not preſented by more than ten.

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* *Trial of the Biſhops*, p. 121. † Vid. *the Reſolutions of the Law.* Coke *Juriſdiction of Courts.*

Having

Having mention'd this Act, which (tho made to limit and reſtrain the Subject, and curtail his natural Right of petitioning) is a full Declaration of the Peoples Right to apply themſelves to the King or Parliament *by Petition, for the Redreſs of their Grievances, and for obtaining ſuch things as they apprehend neceſſary or beneficial to the Safety or Well-being of the Nation.* I need not urge any other Authorities, nor take notice even of that Act paſs'd ſince the Revolution, wherein the Rights of the People are contain'd, and that of Petitioning is declar'd to be one. 'Tis evident to any Reader of the moſt ordinary Capacity, that the *Kentiſh* Petition is warranted by the Law of the Land, and ſo plainly within the Letter of that Act, that thoſe Men are forc'd to acknowledg it, who take a great deal of pains to juſtify all the Proceedings of the Houſe of Commons. Was it not then (to uſe the Words of *Legion) illegal, and a notorious Breach of the Liberty of the Subject, and ſetting up a Diſpenſing Power in the Houſe of Commons, to impriſon Men who were not their Members, by no Proceedings but a Vote of the Houſe, and to continue them in Cuſtody SINE DIE?* A late *Pamphleteer* by way of Anſwer to this tells * us, that *to ſay this is done by a ſingle Vote without other Proceedings, is mere Babling and Nonſenſe; for Impriſonment is the firſt ſtep in order to future Proceedings, and practis'd by every ſingle Magiſtrate.* What does this Scribler mean? were not thoſe Petitioners impriſon'd by a Vote of the Houſe without any other Proceedings? Was there any Indictment or legal Proceſs to try whether they were guilty of any Treſpaſs againſt the Law? For what Reaſon does he tell us that *Impriſonment is the firſt ſtep in order to future Puniſhment?* Would he thereby inſinuate that their Crime was ſuch as might be further puniſh'd by Law? Their Judges in St. *Stephen's* Chappel knew very well that it cou'd not. If it could, why were they not proceeded againſt? Why were they kept in Priſon 'till the End of the Seſſion? If they could not, why ſhould they be impriſon'd at all, ſince it could be in order to no future Proceedings? But he tells us, that *this is practis'd by every Magiſtrate.* 'Tis true; they impriſon, but 'tis to keep the Peace, and in order to future Puniſhment; and what they do is allow'd and warranted by the Law of the Land. From what I have already ſaid in this

* England's *Enemies expos'd, and its true Friends and Patriots defended*, p. 40.

Diſcourſe, 'twill appear how abſurd 'twould be to make this an Argument for the *Commons* having ſuch a Power as they have us'd in impriſoning thoſe Gentlemen. The Reader will from hence judg whether *Legion* or this Author is moſt guilty of *Babling* and *Non-ſenſe*. The Deſign of this Pamphleteer is to throw all the Dirt he can on the late Miniſtry, to bring them under the Odium of the Nation, (a Work which the *Jacobits*, the *French* Party, and Papiſts of *England* are now, and have been a great while very intent upon) and to recommend the Proceedings of the Houſe of Commons, and the preſent Miniſtry to the People. Theſe are the Perſons pointed at in the Title of his Book, which he calls England's *Enemies expos'd, and its true Friends and Patriots defended.* If he ſhew no better Judgment in diſcovering who deſerve to be called the *Enemies*, who the *Friends* of *England*, than in laying the Charge of *Babling* and *Non-ſenſe*, he will do as little Service to *England* in helping her to make any uſeful Diſcovery of her real Friends and Enemies, as he has done to his Friends by his poor, his paltry, and palpable Flatteries. The Prince of Darkneſs when he goes up and down to do miſchief, and deſtroy the Kingdoms of the Earth, as he turns himſelf into an Angel of Light, ſo has he Emiſſaries *qui nigra in candida vertunt*, little Hirelings whoſe Task it is to *call Evil Good, aud Good Evil*, to deceive with falſe Colours, that he may be the better able to deſtroy. To give People a little Taſt of this Panegyriſt's Impoſitions, and the Judgment he has made of Men, I will only take notice here that he commends *the fair Character* of Mr. *J---n H--w*, and calls him (who moſt certainly call'd the Treaty made by the King a *felonious Conſpiracy*) *a zealous* * *Patriot*, and one *who will not exceed his Duty*; that he repreſents the *Spe--er* as a Perſon deſerving the *honourable Character of an honeſt* Engliſh *Gentleman, a Champion for Liberty, and a true Patriot without Diſguiſe, Colluſion, or Self-intereſt* †; that *they whoſe long Experience in publick Affairs gave them knowledg of the Methods employ'd by* France *in former Reigns, to enſlave* Europe, *are beſt able to prevent his Deſigns in this* ‖; that *tearing up our Conſtitution by the Roots* is the Work of the late Miniſtry **; that they *have betrayed the King*, and *carry on Purpoſes deſtructive to the Nation* ††; that if we have a *Porto-Carero* in the

* Pag. 45. † P. 47. ‖ Pag. 21. ** P. 18. †† P. 23.

Nation,

Nation, 'tis he *who has done his utmoſt to deliver us up to* France, *by inveſting the moſt Chriſtian King with a Power to ſeize us*; that 'tis he (meaning L---d *Hall—ax*) to whom *French* Gold is given *. Strange Effrontery! Had Sir *Bar——w Sh--er* ſpoken this, I ſhould not wonder at it; he, we know, when the Lords were voted guilty of high Crimes and Miſdemeanours for the Treaty of Partition, and an Impeachment was order'd, did not bluſh to ſay openly in the Houſe that the News of it wou'd be very unwelcom at *Verſailles*.

But to return from this Digreſſion to the matter in hand. Thoſe who cannot deny that the Subject has a Right to petition, yet juſtifie the Proceedings againſt thoſe who deliver'd the Petition, becauſe of its reproaching the Honourable Houſe, and preſcribing Rules to our Legiſlators. The Reſolution of the Houſe of Commons concerning it was, that 'twas *ſcandalous, inſolent, and ſeditious, tending to deſtroy the Conſtitution of Parliament, and to ſubvert the eſtabliſh'd Government of this Realm.* Before I come to a particular Examination of this Reſolution, I muſt crave leave to make this Remark upon it, That this very Cenſure, and the ſevere Treatment of the Petitioners, ſhew us plainly into what Hands we are fallen. We remember very well when it was that Sir *Edw. Seymour*, then a Privy Counſellour, and ſome others now in Power, learned the trick of giving hard Names to Petitions. What I here hint at I will endeavour to repreſent in the ſhorteſt View I can, becauſe the matter will be pertinent to the Subject I am treating of, and will give true *Engliſh* Men an opportunity of making ſome Reflections which will be uſeful to us in the preſent Circumſtances of our Affairs. We cannot forget what great concern the *Commons* of *England* above twenty Years ſince ſhew'd for the Proteſtant Religion; that their Zeal to preſerve it was ſeen in four Parliaments which were diſſolv'd in a little more than the ſpace of two Years, by reaſon of their Warmth in proſecuting Popiſh Conſpirators, and labouring to exclude the Duke of *York*, whoſe Succeſſion to the *Crown* rais'd the Hopes of Papiſts, and gave birth to all their Plots.

The firſt was the long Parliament, which conſiſted of Members ſo devoted to the Crown, that they would have gratified it in any

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*Pag. 13, 14.

Demand

whatsoever, had not the Measures taken to destroy *Holland*, the great Friendship contracted with *France* by the Mediation of the Duke of *York*, and the Growth of Popery sour'd their Tempers, and given their Inclinations quite another Bias. After their Prorogation on the 28*th* of *December*, 1678. which was soon follow'd by a *Dissolution*, the next Parliament which begun at *Westminster* on the 6*th* of *March*, $167\frac{8}{9}$. pursu'd the same Measures to secure the Religion and Laws of *England*, and were for that reason prorogu'd on the 26*th* of *May* following.

The People of *England* alarum'd at this, and growing into greater Fears of the Conspiracy which the Parliament endeavour'd to prevent, sent Petitions to the King from several Places, wherein they represented the Grievances of the Nation, and pray'd for the sitting of the Parliament to redress them. I shall take notice of the Stile of one for all, *viz.* that of the City of *London*, wherein they set forth that there is *a most damnable and hellish Popish* PLOT, BRANCH'D FORTH INTO THE MOST HORRID VILLANIES, *against his Majesty's most Sacred Person, the* Protestant *Religion, and the well establish'd Government of his Realm, for which several of the principal Conspirators stand impeach'd by Parliament. Therefore in such a time when his Majesty's Royal Person, as also the* Protestant *Religion, and the Government of the Nation are in most imminent Danger, they most humbly and earnestly pray that the Parliament which is prorogu'd until the* 26th *Day of* January *may then sit, to try the Offenders, and to redress all the most important Grievances, no otherwise to be redress'd.* This Petition, which was a Roll of above 100 yards in length, was presented by Sir *Gilbert Gerrard*, and eight other Gentlemen of good note. They all fail'd of the desir'd effect, for the Parliament was dissolv'd, and none other sate till *October* following.

The Men now in Power have not, it seems, forgotten how they resented those Petitions at that time. Their Measures then are the very Precedents which they copy after now. Tho 'twas then the Subject's Right to petition, as I have shewn it is now; tho the Petitioners took care to keep within the Bounds of the Law, yet a Proclamation issu'd out on the twelfth of *December*, 1679. to prohibit such *illegal* and *tumultuous Petitioning, as tending to Sedition and Rebellion.* Besides, care was taken to prevail upon their Friends to procure *Counter-addresses*, wherein the Subscribers express'd their *Abhorrence of Petitioning.*

These

These Measures that were taken to run down this Right of the Subject, and to subvert the Constitution of Parliament, together with the Displeasure conceiv'd against some Men of great Posts in the Law, and Figure in the Civil State, for acting illegally, and *giving pernicious Counsel* (as the Commons were pleas'd to term it) *to his Majesty*, occasion'd very warm Votes and Resolutions in the next Parliament, which, after many Prorogations *, sat on the 21 of *October*, 1680. and continu'd sitting to the 10th Day of *January* following.

Within six Days after their Meeting, (*viz. October 27th*) immediately after they had agreed upon an Address to his Majesty, wherein they express'd their *Resolution to pursue with a strict and impartial Enquiry the execrable Popish Plot*, they proceeded to Votes about Petitions. Then, as I observ'd before, 'twas

Resolv'd, Nemine contradicente, *That it is, and ever hath been, the undoubted Right of the Subjects of* England, *to petition the King for the calling and sitting of Parliaments, and redressing Grievances.*

Resolv'd, *That to traduce such Petitioning as a Violation of Duty, and to represent it to his Majesty as tumultuous and seditious, is to betray the Liberty of the Subject, and contributes to the Design of subverting the antient legal Constitutions of this Kingdom, and introducing* ARBITRARY POWER.

Order'd, *That a Committee be appointed to enquire of all such Persons as have offended against these Rights of the Subjects.*

The next day (*October* 28.) Sir *Francis Wythens*, as I observ'd before, being found guilty in this particular, they voted him *a Betrayer of the undoubted Rights of the Subjects of* England, and order'd him to be expell'd the House. The City of *London*, having petition'd the House against Sir *George Jefferys* their Recorder, and it being refer'd to a Committee, they pass'd this Vote on the 13th of *November* following,

Resolv'd, *That this Committee is of opinion, that by the evidence given to this Committee, it does appear that Sir* George Jefferys, *Re-*

* *The former Parliament being dissolv'd, Writs were issu'd forth for another to sit at* Westminster *the* 17th *Day of* December, 1679. *from thence prorogu'd to the* 26th *of* January, *from thence to the* 15th *of* April, *thence to the* 17th *of* May, *thence to the* 1st *of* July, *thence to the* 22d *of the same, thence to the* 23d *of* August, *thence to the* 21st *of* October.

corder of the City of London, *by traducing and obſtructing Petitioning for the ſitting of this Parliament, hath betrayed the Rights of the Subject.* To which the Houſe agreed, and 'twas order'd, *That an humble Addreſs be made to his Majeſty to remove him out of all publick Offices.* They further order'd likewiſe, that the Committee ſhould enquire into all ſuch Perſons as had been adviſing or promoting of the late Proclamation, ſtiled *a Proclamation againſt tumultuous Petitioning.* The Grand Juries of the Counties of *Somerſet* and *Devon* having expreſs'd their Deteſtation of ſuch Petitioning, the Houſe on the nineteenth of *November*, order'd that the two Foremen of the ſaid Juries, and two others ſhould be ſent for in Cuſtody of the Serjeant at Arms to anſwer for Breach of Privilege (as they called this Abhorrence of Petitioning) by them committed againſt the Houſe. The next Day they voted that one *Thomas Herbert* Eſq; ſhould be ſent for in Cuſtody, for proſecuting *John Arnold* Eſq; at the Council Table, for *promoting a Petition, and procuring Subſcriptions.* To them they added two others upon the ſame account, whom they called *Betrayers of the Liberties of the Subject.*

On Wedneſday the fifth of *January*, the Commons order'd an Impeachment againſt Sir *Francis North* Chief Juſtice of the *Common Pleas*, Sir *William Scroggs* Chief Juſtice of the *King's Bench*, Sir *Thomas Jones* one of the Juſtices of the ſame Bench, and Sir *Richard Weſton* one of the Barons of the Exchequer. Sir *Francis North*'s Crime was, that he (as appear'd by the Confeſſion of the Attorney General before the Houſe, on Wedneſday the twenty fourth of *November*) was *adviſing and aſſiſting in drawing up and paſſing the Proclamations againſt tumultuous Petitions.* Againſt Sir *William Scroggs* and Sir *Thomas Jones* there were a great many Complaints, which occaſion'd many Reſolutions of the Houſe and Votes againſt them. One of the great Complaints was, that when the Grand Jury which ſerv'd for the Hundred of *Oſſulſton* in the County of *Middleſex*, attended the *King's Bench* with a Petition, which they deſir'd the Court to preſent in their Name to his Majeſty, for the ſitting of that Parliament, the Chief Juſtice ſaid he would diſpatch them preſently; That they took it ill to have a Petition offer'd to alter the *King*'s Mind contrary to his *Proclamation*; That when there were ſeveral Preſentments againſt *Papiſts* * and other Offenders, they diſcharg'd the Grand Jury

* *Among which there was a Bill againſt the Duke of* York *for not coming to Church.*

four

four Days before the End of the Term, which was never done before. This Act they voted *Arbitrary, Illegal, and a high Misdemeanour*, several Days * before this Impeachment was order'd. One of Mr. Baron *Weston*'s great Crimes was, That, in an extraordinary kind of Charge given the Assizes before at *Kingston* (in the County of *Surrey*) he inveigh'd very much against *Farel, Luther, Calvin*, and *Zuinglius*, condemning them as Authors of the Reformation: Which was against their Princes Minds, and then adding to this purpose, † Zuinglius *set up his Fanaticisms, and* Calvin *built on that blessed Foundation: and to speak Truth, all his Disciples are season'd with such a Sharpness of Spirit, that it much concerns Magistrates to keep a streight hand over them; and now they are restless, amusing us with Fears,* AND NOTHING WILL SERVE THEM BUT A PARLIAMENT. *For my part I know no Representative of the Nation but the King* ||; *all Power centers in him. 'Tis true, he does intrust it with his Ministers, but he is the sole Representative; and i'faith he has Wisdom enough to intrust it no more in these Men, who have given us such late Examples of their Wisdom and Faithfulness.* These Words (which were witnessed by several Persons, some of whom put them immediately in writing) made the Committee before whom they were prov'd come to this Resolution, *That the said Expressions in the Charge given by the said Baron* Weston, *were a Scandal to the Reformation, in Derogation of the Rights and Privileges of Parliaments, and tending to raise Discord between his Majesty and his Subjects.*

Two days after that the Commons agreed ** upon impeaching these Great Men of the Law, (who every one came under the publick Censure for appearing *Abhorrers* of Petitioning for the Sitting of the Parliament) they fell into other Votes, which shew'd what it was they wanted a Parliament for. Upon a Message sent to them from his Majesty, they came to these several Resolutions following.

Resolv'd, *That 'tis the Opinion of this House, that there is no Security or Safety for the Protestant Religion, the King's Life, or the well*

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* 22d *of* November. † *We see the Grand Artifice then was to represent all who wou'd not do what the Courtiers then wou'd have them, as Fanaticks.* || *Nor did any of his Kidney know any other in those Days; but now, the King being chang'd, all Power is made to center in the House of Commons.* ** *viz.* January *the* 7th.

consti-

conſtituted and eſtabliſh'd Government of this Kingdom, without paſſing a Bill for diſabling James *Duke of* York *to inherit the Imperial Crown of* England *and* Ireland, *and the Dominions and Territories thereunto belonging: And to rely upon any other Means or Remedies without ſuch a Bill, is not only inſufficient but dangerous.*

* Reſolv'd, *That his Majeſty in his laſt Meſſage having aſſur'd this Houſe of his Readineſs to concur in all other Means for the Preſervation of the Proteſtant Religion, this Houſe doth declare, that until a Bill be likewiſe paſs'd for excluding the Duke of* York, *this Houſe cannot give any Supply to his Majeſty, without danger to his Majeſty's Perſon, extreme Hazard of the Proteſtant Religion, and Unfaithfulneſs to thoſe by whom this Houſe is truſted.*

Reſolv'd, *That all Perſons who adviſ'd his Majeſty in his laſt Meſſage to this Houſe, to inſiſt upon an Opinion againſt the Bill for excluding the Duke of* York, *have given pernicious Counſel to his Majeſty, and* ARE PROMOTERS OF POPERY, AND ENEMIES TO THE KING AND KINGDOM.

After theſe General Reſolutions, they ran into ſevere Votes and Reſolutions againſt *Geo--ge* E. of *Hal—ax*, *H—ry* Ma--qs of *Wor —er*, *H —ry* E. of *Cla—on*, *Law—ce H———de* Eſq; *Le—s* E. of *Fev———am*. A Motion was alſo made for an Addreſs to his Majeſty, to remove *Ed—rd Sey—r* Eſq; from his Majeſty's Council and Preſence, but it was adjourn'd to the Monday following, which was the Day on which the Parliament was prorogu'd. The Reaſon perhaps why they did not preſs this Motion, was becauſe they had agreed upon Articles of Impeachment againſt him, upon other ſcores, juſt twenty Days before.

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* *For the better underſtanding of this Place, we are to take notice, that his Majeſty in a Speech which he made on the* 15th *of* December, *promis'd them (as he takes notice he had done before) to concur with them in any Remedies for ſecuring the Proteſtant Religion, which might conſiſt with preſerving the Succeſſion in its due and legal Courſe of Deſcent. The Commons in a long Anſwer to this Speech on the* 18th *of* December *tell him, That no Interruption of that Deſcent has been endeavour'd by them, except only the Deſcent upon the Perſon of the D. of* York, *who by the wicked Inſtruments of the Church of* Rome, *has been manifeſtly perverted to their Religion; that his Succeſſion is utterly inconſiſtent with the Safety of his Majeſty's Perſon, the Preſervation of the Proteſtant Religion, and the Property, Peace and Welfare of his Proteſtant Subjects. On the fourth of* January *he ſent them another Meſſage, wherein he tells them that he is ſorry to ſee their Thoughts ſo wholly fix'd upon the Bill of Excluſion; that he is confirm'd in his Opinion againſt that Bill, &c. This occaſion'd the Reſolutions of the* 7th *of* January, *ſet down here.*

Their

Their warm Procedings, and their insisting upon that particular Method to secure the Protestant Religion, occasion'd not only the Prorogation of this Parliament on the 10*th* of *January*, but of the following Parliament likewise at *Oxford*, which met the 21*st* of *March*, and was dismiss'd on the 28*th* as soon as they read the Bill of Exclusion brought in there. On the 10*th* of *January* the *House of Commons*, knowing that they were to be prorogu'd, before the Prorogation came to several Resolutions, two of which I shall here take notice of.

1. Resolv'd, *That whosoever advis'd his Majesty to prorogue this Parliament to any other purpose than in order to the passing of a Bill for the Exclusion of* James *Duke of* York, *is a Betrayer of the King, the Protestant Religion, and of the Kingdom of* England, *A PROMOTER OF THE* FRENCH *INTEREST, AND A PENSIONER TO* FRANCE.

2. Resolv'd, *That the Thanks of this House be given to the CITY OF* LONDON, *for their manifest Loyalty to the King, their Care, Charge, and Vigilancy for the Preservation of his Majesty's Person, and of the Protestant Religion.* This Care and Concern which the City of *London* shew'd for the Protestant Religion, in that time of imminent Danger, appear'd in many Instances, and in two particularly, which the House thought did then deserve a grateful Acknowledgment, first in petitioning the King for the Sitting of that Parliament; secondly, in voting an Address to his Majesty to declare their Loyalty; and to petition him that the Parliament might sit until *Protestantism was secur'd.*

Having given this Account of the Proceedings both of the Courtiers, and House of Commons, the one to run down, the other to assert the Subject's Right of Petitioning in those days; I must crave leave to take notice of what pass'd afterwards, because 'twill be of use to us in the Matter I am now treating of.

After the Dissolution of the *Oxford* Parliament, the King publish'd a Declaration, wherein he vouchsaf'd *to declare the Causes and Reasons of his Actions to his People.* It might very well be imagin'd, that after the People had so universally petition'd for a Sitting of the last Parliament at *Westminster*, to secure their Religion and Liberties, which the Conspirators were now attacking with the utmost Vigour, they wou'd be more than a little alarum'd to see that and the succeeding *Parliament* at *Oxford* so soon dissolv'd, and that deny'd them which they thought the only Security for their

Religion. He begins therefore with telling them, that 'twas *with exceeding great Trouble, that he was brought to diſſolve the two laſt Parliaments.* 'Twere well that thoſe who in their Votes concerning the *Kentiſh* Petition, ſhew'd that they have not forgotten the Spirit of the Courtiers at that time, as to their Abhorrence of Petitioning, had remember'd their other Reſentments, expreſs'd in this Declaration, as the Reaſons for diſſolving that Parliament.

One Complaint is, That the *Commons made arbitrary illegal Orders, for taking Perſons into Cuſtody for Matters that had no relation to Privilege of Parliament.* Was it at that time arbitrary and illegal to take thoſe degenerate Wretches into Cuſtody, who publiſh'd under their Hands Abhorrences of Parliaments, and of thoſe who in humble and lawful Manner petition'd for their Sitting in a time of ſuch extreme Neceſſity; And is it not now ſo to impriſon and confine Men for doing their Duty to their King and Country, no otherwiſe than the Law preſcribes? Is it a greater Breach of Privilege to ſhew a Letter written by Sir *Ed—rd Se——r*, than, in compliance with a ſtrange arbitrary illegal Proclamation, to run down the Subject's Right of Petitioning; and thus, in effect, to ſtrike at Parliaments themſelves, and endeavour to wound the Conſtitution? What would Mr. *Bo—n* have ſaid to this? Surely he muſt have bluſh'd to ſee his old Friends, whoſe Intereſt he then ſerv'd, in running down the *Commons* Power of * impriſoning, exerciſe ſuch Acts of Power as were never heard of in *England* before. *Tom Sheridom*, who labour'd in the ſame Cauſe, and wrote againſt that Power of the *Commons*, which he felt in his own Perſon, with as much Warmth as 'twas poſſible for *Bo—n* to do, did he ſee theſe things, wou'd be able perhaps, to behold them with little aſtoniſhment. He knew the Frailty of Human Nature, and carried much of it about in his own Body; for after he had taken a great deal of Pains (as all the Royal Scibes of thoſe times, and his Religion did) in decrying *Fanaticiſm* and *Republican* Principles, in crying up Epiſcopacy and the Church of *England*, and reſcuing the Minds of Men from thoſe groundleſs Fears of Popery, which were running them into Meaſures pernicious to the

* *Reflections on a Pamphlet ſtil'd*, A juſt and modeſt Vindication of the two laſt Parliaments, P. 56, 57, &c.

Duke

Duke his Maſter's Intereſt; he ſaw, poor Man, Popery rampant, and a Popiſh King in *England*; he ſaw the Biſhops, and (which he could not but wonder at) was glad to ſee them, in the Tower; and, which muſt be the greateſt wonder of all to ſuch a zealous Churchman as he was, he ſaw himſelf a Papiſt. It wou'd therefore be now the leſs ſurpriſing to him, to ſee his old loyal Friends turn'd downright Republicans, and as violent in the Houſe of *Commons* for illegal and arbitrary impriſoning, as they were againſt that, and all other Power in the Commons.

Another Complaint in the *Declaration*, and a Reaſon given for diſſolving thoſe Parliaments, is their *ſtrange illegal Votes, declaring divers eminent Perſons to be Enemies to the King and Kingdom, and deſiring to have them remov'd from the King's Council and Preſence, without any Order or Proceſs of Law, any Hearing of their Defence, or any Proof ſo much as offer'd againſt them.* The Perſons here pointed at in the Declaration are very well known, ſo is the Crime for which they are declar'd *Enemies to the King and Kingdom.* Time has ſhewn whether thoſe Parliaments had reaſon to expreſs their Reſentments againſt thoſe Men who adher'd to the Duke of *York*'s Intereſt. Had they been leſs warm for him, they had, perhaps, been kinder to their Religion and Country. 'Tis certain that extraordinary Artifices were made uſe of to ſupport his Intereſt. Such I may call this very *Declaration*, which though it was reckon'd for very good * Reaſons, to be contriv'd by a great *French* Miniſter, tho it came not out under the Great Seal, and was only ſubſcrib'd by *Francis Gwyn* the Clerk of the Council, yet was read publickly in the Churches. Such I may reckon the *Addreſſes* contriv'd and ſent up by Men of the ſame Leven with the former *Abhorrers*: Wherein ſome † *aſcribe it to his Majeſty's Wiſdom and Soveraign Authority*, that we are not relapſing *into the Miſeries and Confuſions of Tyranny and Uſurpation, by the ſubtil Artifice and cunning Contrivance of the old* ENEMIES OF

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* *The Declaration was not communicated to the Privy Council, 'till the* 8th *of* April; *but Monſ.* Barillon, *the* French *Ambaſſador, read it to a Gentleman the* 5th *of* April, *and advis'd with him about it. The* Galliciſms *ſpeak it to be* French, *for it introduces the King ſaying,* It was a Matter extremely ſenſible to us, *a Form of Speech peculiar to the* French. *Beſides, the Dutcheſs of* Mazarine *publiſh'd the Diſſolution at St.* James's, *ſeveral Hours before it was done.* Vid. *juſt and modeſt Vindicat. of the Proceedings of the two laſt Parliaments.* † *Addreſs from* Rye *in* Suffolk.

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THE MONARCHY * AND THE CHURCH.* Others, † *That it is the Kingdom's Intereſt to continue the Succeſſion in its due and right Line*; and take upon them to thank his Majeſty, ‖ *for his unalterable Reſolutions to preſerve the Crown in its due and legal Courſe of Deſcent*; *and undertake to ſacrifice their Lives to preſerve the King's Heirs and lawful Succeſſors*: ** And *offer their Lives and Fortunes to his Majeſty's Diſpoſal for this purpoſe.* It muſt be aſtoniſhing as well as ſurpriſing in thoſe Days, that when Petitions had been not only diſcountenanc'd, but forbidden by *Proclamations*, *Addreſſes* ſhould ſo ſoon after be incourag'd and promoted; eſpecially when we conſider that the *Petitions* were in reference to matters which every Body underſtood, and in relation to things wherein the Law juſtified the Petitioners: whereas Addreſſes reſpected Matters which very few underſtood, and which the Law no way authoriſes private Men to meddle with, and which none ſave a Parliament have Power to decide or determine. If change of Parties in St. *Stephen*'s *Chappel* make it not aſtoniſhing to us now to ſee a *H——ſe of Com---s* treat Gentlemen ſo ſeverely as this has done for preſenting a legal Petition, when another Houſe has called others to account for expreſſing their Abhorrence of Petitioning; yet it muſt ſeem a little ſtrange, to ſee thoſe who promoted Addreſſes to the King to ſecure the Intereſt of a *Popiſh Succeſſor*, impriſon ſo many Gentlemen of Worth and Note in their Country, for addreſſing them, and praying, in the moſt difficult Times we ever fell into, that our Religion and Safety may effectually be provided for, and that a King, who under God has preſerv'd the Proteſtant Religion, *may be enabled to aſſiſt his Allies*, and conſequently preſerve our Religion and Liberties. But if nothing of this be ſtrange, is it not a little amazing to compare ſome Mens Proceedings againſt others, with thoſe Remonſtrances to the Nation, publiſh'd in the Houſes of God, where they complain of *Eminent Perſons* being *voted Enemies to the King and Kingdom*, and addreſs'd againſt to have them *remov'd from the King's Council and Preſence*, *without any Order or Proceſs of Law*, *any Hear-*

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* *This was the old Cant to draw in the Church-party to their Side, to make them believe there were evil Deſigns againſt the Monarchy and the Church. That they may keep up a Title to the uſeful Cant, they themſelves increaſe the Number of thoſe Enemies.*
† *Addreſs from the County of* Somerſet. ‖ *Addreſs from* Cambridg, Rippon, *Weſtern Diviſion of* Suſſex. ** *Addreſs from* Hereford. *Addreſs from* Monmouth.

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ing of their Defence? Were ſuch Votes and Addreſſes greater Hardſhips in the Reign of a King who made it his Rule to heap Favours on thoſe who were under the Diſpleaſure of the Houſe of Commons, than they are under a Prince, whom the Commons reckon oblig'd in a manner to comply with them in all their Deſires?

From what I have ſaid it appears when, and upon what account the Subject's Right of Petitioning was run down. As the Petitions offer'd by the People were for the Sitting of the Parliament, and that, to have their Religion and Liberty ſecur'd in a time of great and manifeſt Danger: So were the *Abhorrences* of thoſe Petitions ſet afoot, four Parliaments diſſolv'd, the King's *Declaration* containing the Reaſon of it publiſh'd in Churches, and the *Thankſgiving Addreſſes* to his Majeſty afterwards procur'd to defeat the Meaſures then taken for the Preſervation of our Religion, and to ſecure the Duke of *York*'s peaceable Succeſſion to the Crown. If there be any who conſider, that thoſe who have a concern for the Proteſtant Religion, muſt apprehend at leaſt as much Evil from K. *J.* or his Family's returning now, as from his Succeſſion at that time, and that as it is of as great Importance to the Affairs of *France* to have him on the Throne, or Confuſion in *England*, as then it was; ſo Count *Ta——rd* muſt be as induſtrious in taking Meaſures to ſerve his Maſter, as Mr. *Bar——on* was in thoſe Days: It muſt be a very melancholy Reflection to them, to think how differing the Temper of the *Co——ns* of *England* now is from what it was then: And to ſee the Power in their Hands, who were in all thoſe Court-meaſures which, I'm afraid, have not yet had their worſt Effects.

Good-natur'd People, who are as far from being ſuſpicious of others, as they are from evil Deſigns themſelves, do, I know, judg thoſe Men too ſevere in their Cenſures, who think that in the Treatment of the *Kentiſh* Petitioners there were the ſame Regards and Deſigns that were formerly in their *Abhorrences* and *Addreſſes*: Or that this was done to gratify Count *Ta——rd*, and, by ſtriking a Terror, to prevent the People from running univerſally into Petitions and Addreſſes, and conjuring up a Spirit in the Nation which might be very prejudicial to his Maſter's Affairs. 'Tis true indeed, they do and muſt own that 'tis hard to account for the Severity of their Proceedings: That when the Law has in expreſs Words provided that People may petition the Parliament,

ment, they ſhou'd place ſuch an Affront on the County of *Kent* (I ſhou'd ſay the whole Kingdom of *England*) as to impriſon their Delegates after the manner they did. If every Part of the *Petition* was not ſo nicely worded as they wou'd have it, would it not be ſufficient to reprove them for it? Wou'd no leſs Puniſhment than Impriſonment do? If any of their own Members be at any time tax'd for ſpeaking amiſs, they are ſuffer'd to explain themſelves; why ſhould not they allow others to do the ſame? If there was any thing in the Petition which the Houſe thought a Reflection, one of the Gentlemen told Sir *The——us Ogl——rp* they wou'd declare at the Bar of the Houſe that 'twas what they did not deſign, and would ask pardon for it; but nothing would ſerve that Plenipotentiary's turn but to have them declare that they were ſorry for preſenting the Petition, which they never wou'd do. That which gave offence was, calling their *Addreſſes Loyal*: If they were *Loyal*, it cou'd be no Reflection to call them ſo; if they were not, they had Reaſon I confeſs to think it a Jeer, and at the ſame time they ought to confeſs that 'twas what they deſerv'd. It is moſt certain, that the Deſign of the Gentlemen who ſign'd that Petition, was to ſerve their Country by it, which they did effectually: the Methods then that they made uſe of muſt be ſuch as they thought propereſt for that end, wherefore the Goodneſs and Sincerity of their Intentions muſt ſilence every thing that can be ſaid againſt their way of expreſſing themſelves. The Cenſure of the Commons is very ſevere, they tell us the Petition is *ſcandalous*, *inſolent*, *ſeditious*, *tending to deſtroy the Conſtitution of Parliament*, *and ſubvert the eſtabliſh'd Government of this Realm.* By the Harſhneſs of the Expreſſions, a Man wou'd think that this Petition were an Addreſs to a King, or a *Remonſtrance* that charg'd him with a *felonious Conſpiracy* or making a *Treaty in its own Nature unjuſt.* How can it be *ſcandalous* or *inſolent* for ſo conſiderable a Branch of the *Engliſh* Nation to preſent an humble Petition to their *Delegates*, and pray their *Attorneys* (as *Members* were formerly call'd) to take care of the Buſineſs they intruſted them with? How can it be *ſeditious* to ſhew an extraordinary and unparallel'd Zeal for the King, to pray that he may be inabled to *aſſiſt his Allies*, and that *God may long continue his propitious and unblemiſh'd Reign over us?* How can it *tend to deſtroy the Conſtitution of Parliament*, *and ſubvert the eſtabliſh'd Government of this Realm*, to pray to have thoſe things done, which

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abſolutely neceſſary to prevent our falling into the Hands of thoſe Enemies who will certainly deſtroy the *Conſtitution of Parliament*, and *ſubvert the eſtabliſh'd Government of this Realm.* The laſt *Weſtminſter* Parliament in the Reign of K. *Charles* II. Reſolv'd *, *Nemine contradicente*, (as I obſerv'd before) *That to traduce Petitioning as a Violation of Duty, and to repreſent it to his Majeſty as tumultuous and ſeditius, is to betray the Liberty of the Subject, and contributes to the Deſign of ſubverting the antient legal Conſtitution of this Kingdom, and introducing Arbitrary Power.* This Parliament reſolves, that the *Kentiſh* Petition tends *to deſtroy the Conſtitution of Parliaments, and to ſubvert the eſtabliſh'd Government of this Realm.* 'Tis very ſtrange that to *traduce Petitioning*, and to *petition* ſhou'd both *tend to ſubvert the Conſtitution.* If it be the undoubted Right of the Subject to petition, 'twill be very eaſy to determine which of the two *Reſolutions* is righteſt; and if we compare the former Inclinations of a Party with their late Proceedings, 'twill be evident to us, how the laſt *Reſolution* happens to be wrong. But 'tis ſaid that there is ſome thing particular in the *Petition*, which juſtifies this *Reſolution*; the Petition directs the Houſe of Commons, and tells them what they ſhall do; this, they ſay, is inſolent, and *tends to deſtroy the Conſtitution of Parliament, and to ſubvert the eſtabliſh'd Government of this Realm.* Very ſtrange! Can any Man or Body of Men offer a Petition to others, that is not liable to the ſame Cenſure? Does not their Petitioning plainly ſay, that they think themſelves aggriev'd? does not their Prayer direct thoſe to whom they addreſs, what they are to do? But how this *Petition* of the Grand Jury, Juſtices of Peace, and Freeholders of the County of *Kent*, can be ſaid to *tend to deſtroy the Conſtitution of Parliament, and to ſubvert the eſtabliſh'd Government of this Realm*, is to me very difficult to conceive. Had this indeed, which is an humble Petition, carried Authority and Power in it; had they pretended to a Right to command the Houſe of Commons to do what they wou'd have them, I can't ſee how even ſuch an aſſuming Addreſs as this cou'd bring our Conſtitution into any great hazard. Shou'd the whole Freeholders of the County of *Kent* join unanimouſly in ſuch an Addreſs, yet wou'd the Power and Authority of the Repreſentatives of the Freemen of *England*, and the *Conſtitution of Parlia-*

* 27th *of* October, 1680.

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ment, reſt very ſecure in the Judgment of the reſt of the People, who wou'd never juſtify ſuch an Uſurp'd Authority. An uſurp'd Authority I call it, and muſt ſubſcribe to that, as what I take to be very moderate and juſt, which Colonel *Algernon Sidney* ſays in that Diſcourſe which coſt him his Life; * *I believe*, ſays he, *that the Powers of every County, City and Borough of* England, *are regulated by the General Law to which they have all conſented, and by which they are all made Members of one political Body* ——— *Among us every County does not make a diſtinct Body, having in it ſelf a ſovereign Power, but is a Member of that great Body which comprehends the whole Nation. 'Tis not therefore for* KENT *or* SUSSEX, LEWIS *or* MAIDSTONE, *but for the whole Nation that the Members choſen in thoſe Places are ſent to ſerve in Parliament: And tho it be fit for them as Friends and Neighbours (ſo far as may be) to hearken to the Opinions of the Electors for the Information of their Judgments, and to the end that what they ſhall ſay may be of more weight, when every one is known not to ſpeak his own Thoughts only, but thoſe of a great Number of Men; yet they are not ſtrictly and properly oblig'd to give account of their Actions to any, unleſs the whole Body of the Nation for which they ſerve, and who are equally concern'd in their Reſolutions, cou'd be aſſembled. This being impracticable, the only Puniſhment to which they are ſubject, if they betray their Truſt, is SCORN, INFAMY, HATRED, AND AN ASSURANCE OF BEING REJECTED WHEN THEY SHALL AGAIN SEEK THE SAME HONOUR.* But tho a Part of the Freeholders of *England* cannot impoſe their Commands on the Repreſentatives of the Whole, yet may they repreſent any private or publick Grievance; nor can I ſee how the doing this can tend to deſtroy the Conſtitution of Parliament. The Meaning of thoſe who tell us that it does, muſt be this, that ſome People's complaining in behalf of the Publick, may probably influence others, and thus occaſion Petitions from all Parts of the Kingdom. What if it ſhou'd do ſo? What if far the greater Part of the Freemen and Freeholders of *England* ſhou'd ſend Petitions, and repreſent publick Grievances; how can this tend to deſtroy the Conſtitution of Parliament? If there be any Law which forbids the People to addreſs, or give any Inſtructions to their Dele-

* *Diſcourſes concerning Government*, Sect. 44. Pag. 451.

gates,

gates, the doing ſo muſt be own'd to be againſt Law; but 'tis not a Treſpaſs, which (to ſpeak in the Phraſe of a certain Patriot) can *pull up our Conſtitution by the Roots.* But we are told, that by the Conſtitution of our Parliament, the Members are left to the Freedom of their own Debates, and are to act without Controul; they therefore who take upon them to intermeddle in their Buſineſs, invade that Freedom, and conſequently our Conſtitution. They who tell us that the Repreſentatives of the Freemen of *England* have ſuch a Freedom as this, and are to act without controul, cannot ſure mean that they have delegated their whole Power to them, ſo that 'tis free for them to do whatever they pleaſe, without any regard to the Inclinations or Intereſt of thoſe who imploy them. 'Tis not to be ſuppos'd that he who takes what Servant he pleaſes, is oblig'd to ſuffer him to do what he pleaſes. The Knights, Citizens, and Burgeſſes, ſent by the People of *England* to ſerve in Parliament, have a Truſt repoſed in them, which if they ſhould manifeſtly betray, the People, in whom the Power is more perfectly and fully than in their Delegates, muſt have a Right to help and preſerve themſelves. Were not this ſo, the Condition of thoſe who act by Delegates, would be worſe, and their Freedom leſs than that of other States; which I think is not ſo in the reckoning of Mankind. The *Achaians*, *Etolians*, *Latins*, *Samnites*, and *Tuſcans*, formerly did, as now the United Provinces of the *Netherlands*, the *Switſers* and *Griſons* do, tranſact all things relating to their Aſſociations by Delegates; The *Athenians*, *Carthaginians*, and *Romans* kept, as the *Venetians*, *Genoeſes*, and *Luccheſes* do now, the Power in their own hands. Theſe all, as the above-nam'd Honourable Author * obſerves, were and are equally free. But 'twould, I think, be very improper to reckon them ſo, unleſs we ſuppos'd that the Power committed to their *Truſtees* remain'd ſtill in them. That the Power ariſes and is fix'd here, and that the Delegates reckon themſelves oblig'd to follow the Directions of thoſe who chuſe them, is evident from the practice of other Countrys, whoſe Governments had the ſame Origin with that of *England.* The Deputys or *Procuradores* of the ſeveral Parts of *Caſtile* did in the *Cortez* held at *Madrid*, in the beginning of *Charles* the Fifth's Reign, excuſe themſelves

* Sidney *of Government*, p. 451.

from giving the Supplys he desir'd, because they had receiv'd no Orders * in that Particular from the Towns that sent them; and afterwards receiving express Orders not to do it, they gave his Majesty a flat denial. The like was frequently done during the Reigns of that Great Prince, and of his Son *Philip* the Second. The same way was taken in *France*, as long as there were any General Assemblies of Estates; and if it do not still continue, 'tis because there are none. For no Man who understood the Affairs of that Kingdom, did ever deny, that the Deputies were oblig'd to follow the Orders of those who sent them. In the General Assembly of Estates held at *Bloys* in the time of *Henry* the Third, *Bodin* then Deputy † for the Third Estate of *Vermandois*, by their particular Order, propos'd so many things as took up a good part of their time. Other Deputies alledged no other Reason for many things said and done by them, than that they were commanded so to do by their Superiors. These General Assemblies being laid aside, the same Custom is still used in the lesser Assemblies of Estates in *Languedoc* and *Brittany*. The Deputies cannot, without the infamy of betraying their Trust and fear of Punishment, recede from the Orders given by their Principals. The same Method is every day practis'd in the Diets of *Germany:* the Princes and great Lords, who have their places in their own Rights, may do what they please; but the Deputies of the Cities must follow such Orders as they receive. The Histories of *Denmark*, *Sweden*, *Poland* and *Bohemia*, testify the same things.

This appears to have been the Constitution of *England*. *Formerly*, says my Lord *Coke* ‖, *in the Writs to the Sheriffs for the election of Commons, the King signified that by the Advice of his Council he called them together about some weighty Affairs, that concern'd himself, the State and Defence of his Kingdom of* England, *and the H. Church, and required them to chuse such Men as would promote those Affairs; that for want of such a Power, and by an improvident Election, the aforesaid Business might not be left undone.* The Business that requir'd their meeting was publish'd in the Writs, that the Commons and Freemen might consider what they thought convenient to have done, and that they might chuse proper Delegates, and direct them as they thought fit. This I take to be the Reason why *'twas*

* Vida de Carlos 5° de Sandoval. † *Hist.* Thuan. ‖ 2*d Instit.* fol. 9, 10.

always

always the Cuſtom at the meeting to declare the cauſe of Parliament, which in antient time, (ſays * he) *was ſhew'd in the Chamber* de peint, *or St.* Edward's *Chamber:* That the Perſons elected being more fully inform'd of the Buſineſs to be tranſacted by them, might be able to give their reſpective Countries timely information of it, in order to receive their Directions therein. In this opinion we may be confirm'd by what that Great Sage of the Law tells us in another place. *When any new Device is propos'd on the King's behalf,* ſays † he, *the Commons may anſwer, That tendred the King's Eſtate, and they are ready to aid the ſame, only in this new Device they dare not agree without Conference with their Countries.*

Since then in our Conſtitution the Delegates of the People have reckoned that they had a Truſt repos'd in them by thoſe whom they repreſented, and that they were oblig'd to make their Will the rule of their Actions; 'twill be very hard to conceive how it can tend to deſtroy this *Conſtitution, to pray them to have a regard to the Voice of the People.* If they faithfully diſcharge the Truſt repos'd in them by the Country, 'twill be impoſſible at any time to procure a Petition ſigned by ſuch a number of Gentlemen as thoſe of the County of *Kent,* which may any way ſeem to arraign their Proceedings; but if their Management bring them under the ſuſpicion of the Nation, the People, who have a right to preſerve themſelves, muſt be allow'd a Liberty, to let them know in civil and reſpectful Terms what is the Voice of the People, and what they think the Neceſſitys of the Publick. In ſuch a caſe 'tis impoſſible for all to repreſent the Publick Grievances together; ſome therefore muſt begin, and they who addreſs firſt, when there is a good reaſon for it, deſerve the Thanks of the Whole. 'Twas impoſſible that ſuch a conſiderable Body of Gentlemen as the *Kentiſh* Petitioners ſhould conſpire together to affront the Houſe of *Commons*; they knew what they did was done in the Eyes and Face of the Nation, that ſuch an Act of folly and madneſs muſt bring 'em into the loweſt degree of Contempt with the People of *England.* They thought therefore what they did was a Duty which they ow'd their Country in that great and niee Juncture: whether it was ſo or no, will appear from

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* 2d *Inſtit.* fol. 8. † 2d *Inſtit.* fol. 14.

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The third and laſt Member of this Diſcourſe, which is to ſhew what Reaſons thoſe Gentlemen had to petition.

'Twas notorious to them, and all the World, that our Affairs were at that time in a very dangerous and melancholy Poſture. They knew that *France* has a long time aim'd at the Univerſal Monarchy: That as ſhe has Maxims in her Government which are very well calculated for ſuch great Deſigns, ſo by her carrying on a Ten years War againſt the powerful States confederated againſt her, they ſaw that ſhe has Force to ſupport her in thoſe Enterprizes. If her Power was formidable when ſhe march'd out only in her own Strength, it muſt be very terrible to ſee her ſtrengthen'd with the Union of no leſs a Power, than that which two Ages before graſp'd likewiſe at the Empire of the Univerſe. 'Tis true indeed, thoſe Dominions were not bequeath'd to her; but being given to one of the Houſe of *Bourbon*, who muſt live under the Guardianſhip, be protected by the Power, and govern'd by the Councils of *France*, ſhe muſt neceſſarily and of courſe have the ſame command over their Wealth and Force, that ſhe had over her own. This was an early Effect of the *Spaniard*'s Will; for tho in the beginning the *French* Party among us endeavour'd to make us believe, that *France* would be in no better condition than 'twas before, becauſe the Duke of *Anjou* would forget his Father's Houſe, and be govern'd only by *Spaniſh* Councils; yet the contrary was evident at the Time thoſe Gentlemen deliver'd that Petition. They ſaw that the *Milaneſe* was deliver'd up to her; that the ſtrong Holds of the *Spaniſh Netherlands*, which we have a long time reckon'd the Bulwark of *England*, and have ſpent vaſt Treaſure and Blood to keep them out of her Hands, were all in the poſſeſſion of her Troops: And not only ſo, but that the Adminiſtration of all the Affairs of *Spain* were given up to her. Beſides this, they ſaw how great a Breach has been made in the Proteſtant Religion ſince the beginning of the laſt Age: That the Kingdom of *Bohemia*, which was almoſt wholly Proteſtant, is now intirely Popiſh: That in *Poland*, *Auſtria*, and *Moravia*, the Proteſtants who were a Moiety of the People, are utterly deſtroy'd: That their Deſtruction is almoſt compleated in *Hungary*: That the *Newburgers* from zealous Proteſtants, are turn'd deadly Enemies of the Proteſtant Religion: That the *Palatinates* are waſted with Perſecution, and the *Saxons* their Neighbours are ſo far from being able to ſuccour them, that they are in danger

ger from their own Prince: That in *France* where they were powerful enough to carry on ſeveral great Civil Wars; and in *Piedmont* where their Numbers were much greater in proportion to the Countries, and in *Flanders*, *Bavaria*, *Bamburgh*, *Cologn*, *Wartzburgh*, and *Worms*, where they were very numerous, their Religion is totally extinguiſh'd. All this was a very melancholy view; and that which made it more ſo, was to conſider that *France* (which out of regard to her own Intereſt, the greateſt and indeed only Obligation in the World to her, was oblig'd by all means poſſible to deſtroy the Northern Hereſy, ſhe having made this the Foundation on which ſhe built her Hopes of Univerſal Monarchy) was now in a new Friendſhip and Alliance with the fierceſt Zealots of the Church of *Rome*, the *Spaniſh* Clergy, Men whom 'twas her buſineſs to gratify, and whom ſhe could not gratify more than by contriving ſeverer Methods to torture and deſtroy Hereticks.

In ſuch a Juncture as this, 'twas eaſy for a very weak Capacity to ſee what it imported *England* to do in order to ſecure her own and *Europe*'s Liberties, and to prevent the utter extirpation of the Proteſtant Religion both at home and abroad. 'Twas evident that *France*, which had made ſuch Advances already, wanted nothing to make ſure of the Univerſal Monarchy, but only to confirm her ſelf in the Dominions of *Spain*; and as evident it was that every day ſhe continu'd unmoleſted in her new Acquiſitions, her Strength muſt grow prodigiouſly, ſo that in a little time it muſt be inſupportable. In that Caſe ſhe had leaſure and opportunity to ſettle her new Dominions, to diſcover the Weakneſſes of their Fortreſſes, as well as Policy, and to repair both; to learn the Temper of the ſeveral Provinces, and to conſider how they might be ſecur'd, and by what Governours; to make the beſt proviſion that was poſſible for defending *Milan*; and (which has been a long time one of the high Reaches of her Ambition) to get into a quiet poſſeſſion of all the ſtrong Holds in *Flanders*. Beſides this, there was another ineſtimable Benefit which ſhe reap'd by the Quiet that was indulg'd her. Whilſt thoſe who a long time check'd her growing Greatneſs, patiently endur'd this new Union of Power, what could the other Nations of the World think, but that this unconcernedneſs proceeded either from an inward Satisfaction that *France* had acquir'd ſuch

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Power, or a deſpair of breaking it, and reſtoring the Ballance again? The natural Conſequence of either Reflection muſt be to reſolve that 'twas their Intereſt to ſubmit, and indeed to make their Court to a Power which was likely to meet with no oppoſition. 'Twas this that made the *Spaniards*, and the People of their Provinces tamely ſuffer one of the Houſe of *Bourbon* which they hated, to take poſſeſſion of their Dominions: 'Twas this made other States enter into Neutralities and Alliances, which they would have refus'd, had not the quiet and peaceable Conduct of others govern'd their Inclinations. Having once fix'd their Reſolutions, 'tis to be fear'd we ſhall find them adhere too obſtinately to what they have ingag'd to *France*, and reſolv'd with themſelves. If Honour be not ſufficient to influence them, and keep them ſteddy to the Side they have choſen, even Intereſt may help to do it now; for the Notions of that alter, when Men have new modell'd their Thoughts, and let their Heads run upon other Schemes.

In that great Juncture, when the Seaſon was for making the earlieſt and beſt proviſion for ſecuring the Liberties of *Europe*, the Eyes of the World were all fix'd upon *England*. 'Twas ſhe who had always kept the Ballance; and ſhe only having it now in her power to determine whether it ſhould be preſerv'd or no, other Nations were to obſerve her motions, and take their Meaſures from her: None could doubt but that if ſhe had enter'd betimes into a firm League with the *Emperor* and *Holland*, 'twould have preſently produced a Confederacy ſtrong enough to humble *France*, which was graſping at things much beyond the reach of her Power, in that feeble and weak Condition ſhe was reduc'd to by a long War and evil Conduct. 'Twas therefore undoubtedly the Buſineſs of *Engliſh* Miniſters to adviſe the calling of a Parliament immediately upon the news of the *Spaniard*'s Death, and of the Parliament to addreſs the King to make *Alliances*. Had this been done, *Portugal* would have thought it her intereſt rather to enter into Alliances with them, than make her ſelf a Party in eſtabliſhing the Throne of the Duke of *Anjou*, who when he is eſtabliſh'd and made one with *France*, will certainly ſet up his Title to *Portugal*. The Duke of *Savoy* then would have conſider'd that it was by means of the *Equilibrium* between the Houſe of *Auſtria* and *France* that his Anceſtors preſerv'd their Dominions; he would have conſider'd likewiſe whether 'twas worth his while to

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make his Sons Beggars, or Souldiers of Fortune, for the ſake of aggrandizing his Daughter. This will be the Acquiſition of his Battels if they be ſucceſsful; for when the *Milaneſe*, and both the *Sicilys* are in the hands of *France*, his Dominions will be neceſſary to her for Communication. The Pope then probably would have reflected on the Affair of the *Corſi*, the Extenſion of the *Regale*, the four Propoſitions that were advanc'd at *Paris*, and all the enormous Attempts againſt the Dignity of the Head of the Church in the Perſon of Pope *Innocent* XI. and would perhaps have declar'd for the Emperor, had he had ſuch encouragement to do it. Nor is it improbable that the Republick of *Venice* would do the ſame, ſhe could hardly avoid conſidering betimes, that the Neighbourhood of *France* prov'd ſo fatal to her in the ſmall number of Years that *Lewis* XII. enjoy'd *Milan*, that he reduc'd her to greater Extremities than any other War, even that of the *Turks*, ever did. A Conſideration ſo powerful with that wiſe Republick, that tho the vaſt Power of the Houſe of *Auſtria* under the Emperor *Charles* V. might have given her juſt grounds of jealouſy, ſhe would never lend her Ear to any Propoſition of *Francis* I. Succeſſor to *Lewis* XII. Had things been upon a right foot in *England*, 'tis very probable that the Duke of *Bavaria*, and his Brother the Arch-biſhop of *Cologn*, would have remembred the Obligations laid upon them, at leaſt their own Intereſt; and that the former would have taken Meaſures which would make the War much eaſier than 'twill be. In that Caſe the People of *Spain*, and their Provinces, would, if they did no more, keep up their old Reſentments againſt *France*, which in a convenient Seaſon would render them very uſeful to the Confederates. The *Germans* would conſider what danger they were in of having a Prince, grown ſo great by the Acceſſion of the *Spaniſh* Dominions, carry his Arms into *Germany*, where he has great footing already, and challenge all the States that compoſe that great Nation as part of the Succeſſion of *Charlemaign*, of which he and other Kings of *France* have already declar'd themſelves Heirs. In this Caſe ſome (as the Chapter of *Cologn* ſeems very lately to have done) would conſider that in an Hereditary Empire, there would be no more Colleges, nor Diets, nor Chapters: Others, that 'tis a vain thing to diſpute about Prerogatives, and to make *France* judg of the Diſpute, whoſe Arbitration muſt turn to the Ruin of the Empire. And the reſult of theſe Reflections would be to enter into Meaſures agreeable to them.

Theſe probably had been the Reſolutions of thoſe Foreign States, at leaſt of ſome of them, had not the management of *England* diſcourag'd them to that degree, that they muſt arraign themſelves of raſhneſs and folly, if they had taken thoſe Meaſures which they themſelves knew were moſt for their Intereſt.

Things being in this ſtate, 'tis very plain that the Gentlemen of *Kent* had a great deal of reaſon to pray the H--ſe of Com--ns to have a Regard *to the Voice of the People, that our Religion and Safety might be effectually provided for*, and that his Majeſty by *Supplys* might be *enabled to aſſiſt his Allies.* The *Voice of the People* was then every where loud for War, there was ſcarce any ſo weak as that they could not ſee that no Proviſion could be made for our *Religion* or *Safety* without it. 'Twas manifeſt that *France*, after ſhe had been a while ſettled in her new Dominions, would be able to overcome *Holland* whenever ſhe pleas'd. *Holland* being overrun, 'twas eaſy to ſee that *England* being ſpoil'd of her Trade by that Revolution, and the Union of the two great Kingdoms, muſt ſoon follow her Fate. The *French* Party indeed told us, and (which among other things occaſioned ſome Reflections) the *H—ſe of Com—ns* ſeem'd to ſome to be of their Opinion, that our Security might be ſufficiently provided for by a good Fleet. 'Twas a very fond Opinion to imagine that we, who in conjunction with *Holland*, were the laſt War inſulted upon our own Coaſts by the Fleet of *France*; and another time had probably been ruin'd by them, had not the Heavens been favourable to us, ſhould be able, after the loſs both of our Trade, and the Aſſiſtance of the *Dutch*, to maintain a Fleet big enough to ſecure us from a Power ſo exorbitant as that of *France* would then be. A *Powerful Fleet* are words that ſound plauſibly in the Mouths of thoſe People, who are for having our Arms to be as little grievous as may be to *France*, and they ſerve to amuſe and impoſe upon weak People; but Men of Underſtanding muſt allow this to be a very uncertain Security. This was the only Proviſion for our Safety, which the Parliament for a long time ſeem'd inclin'd to allow us. Whatever matter was offer'd that ſeem'd to have the leaſt tendency to a War, was violently oppos'd by the *Sp—er*, *Mu—ve*, *Sey—r*, *Sho—r*, *Fi—ch*, *H—w*, *Ha—rt*, and all thoſe who were entirely in the Intereſt of that Party. This Averſion they plainly diſcover'd in the beginning of the Seſſion, when on the 14*th* of *February*, immediately after the King had made his Speech, they came to the Reſolution, *To ſtand by and ſupport his Majeſty's*

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Government, and take ſuch effectual Meaſures as may beſt conduce to the Intereſt and Safety of England, *the preſervation of the Proteſtant Religion, AND THE PEACE OF EUROPE.* We cannot but remember what Debates aroſe upon this laſt Clauſe, and with what Difficulty 'twas carried by 181 againſt 163, and that the Reaſon why 'twas oppos'd was, becauſe 'twas plainly declaring for a War. Here it was that the Prejudices began againſt that Party in the H—ſe, and this laid the Foun ation for the great ſuſpicions that follow'd afterwards. 'Twas amazing to all thoſe who could diſcover no poſſible means to preſerve us, but by a vigorous War, to ſee ſuch a great number of the Repreſentatives of the Freemen of *England*, labouring for that which of all things in the World *France* moſt deſir'd, and would give any Money for. Nor was this the Voice of that Party in the H—ſe alone, but all without Doors who were of their Faction, and all who had any biaſs to *France*, or the St. *Germain* Family, were every where induſtrious and noiſy in decrying a War, and ſetting forth the inconveniencies of it. But that which gave the melancholieſt Reflection of all, was to find that thoſe who were thought to have the ſole Direction of publick Affairs, were in the ſame Sentiments. They ſpoke their Minds freely upon that Subject, as we have been told, ſo did their Friends; and the ſaying of one Gentleman in great Station, to C—t *Vra —au* the Em——r's Min—er, ought to be remember'd: What their Senſe was, the Author of the three *Eſſays* told us before the Parliament ſat; the manner of his expreſſing it ſpeaks it to be publiſh'd with their Allowance, and thoſe who know his Converſation with them, were perſuaded it was. *If any among us* (ſays he) *ſeem at preſent willing to embrace peaceful Councils, and to decline entering upon immediate Action; 'tis not that they doubt themſelves, or dread the adverſe Strength, or that their antient Enmity to* France *is buried in Oblivion. —They are not ſo apprehenſive of Coping with any foreign Strength, as they are fearful they ſhall be compell'd to enter into freſh Conflicts with the Enemies of ENGLAND, whom they had almoſt ſubdu'd,* &c. *Their Ears can never endure the Cries of the Poor, for want of Work,* &c. (*a*). 'Tis a monſtrous *Tenderneſs and Compaſſion*, which can endure rather to ſee Popery and Slavery diſplay their Banners in this Land, than to behold the Calamities which a new War muſt bring upon their Country. If he can ſee how they can be kept out

(a) *Eſſays upon Ballance of Power,* &c. *pag.* 80, 81, 82.

without a War, he ſees things in quite another Light than what any honeſt Engliſhman does. One would think he thought but ſlightly of the Calamities of a War, when he tells us, that one of the greateſt things to be dreaded in it is, that 'twill bring thoſe Men into play again, who never gave us the leaſt ſuſpicion of their being in any other Intereſt than that of their Country. 'Tis very eaſy to perceive what his Deſigns are, both in running down thoſe Men, and labouring to give us a diſmal Idea of a War: But he and his Friends tell us, that his Book ſhews him to be plainly for a War. 'Twas cunning in him to ſay ſomething, for fear of falling under the rage of an injured Nation; and 'twas Policy to grant him a Diſpenſation to do it, leſt by being too plain in handling an odious Subject, he might put it out of his Power to do any Service for the future. He ſeems ſometimes to write for a War, but (which ſhew'd his Inclination) voted againſt it amongſt the 161: he ought indeed, he ſaid, to do otherwiſe, but *Ja—k H—w* ſmil'd ſo pleaſantly upon him, that he could not divide againſt him. When he ſpeaks for a War, 'tis very coldly, and in other Places he takes care to deſtroy the Force of what he ſaid; in one place he tells us * That *we can reap little from a War but the Perils and Loſſes with which 'tis like to be attended.* This is but a ſmall Encouragement to it. In another, he is afraid *ſuch a Debt will be at laſt Contracted*, and moſt of it abroad, *as in time muſt impoveriſh and ſink* England (*b*). What then muſt we do? Why, *all Engliſhmen ought ſeriouſly to conſider this Reflection which* MACCHIAVEL *makes, That when a Prince, or Commonwealth, arrives at that height of Reputation, that no Neighbour, Prince, or People, dares venture to invade him (unleſs compell'd by indiſpenſable Neceſſity) he may do what he pleaſes* (c). *In all probability*, ſays he, *The* French *are now arriv'd to this formidable pitch of greatneſs, unleſs the* Spaniards *ſhew more Courage than has appear'd in any Meaſures they have taken theſe laſt hundred Years.* If this be ſo, that the Power of the *French* is grown too great to be reſiſted, and we have no hopes but from the *Spaniards* taking good Meaſures, we are in a very miſerable Condition. But hold, he ſhews us ſome hopes yet. *If they can ſo prevail, as to make their young Prince become a good* Spaniard; *if they can divide him from* French *Councils — if the quiet Reception he is like to find make* French *Councils, and* French *Supports no longer neceſſary to him, thoſe fears will be ſomewhat allay'd, which we now*

* *Eſſays upon the Ballance of Power*, &c. p. 77. (*b*) Ibid. *p.* 87. (*c*) Ibid. *p.* 72.

labour

labour under, (a). But are there any hopes that 'twill be ſo? Yes ſure, very great; *He gives us promiſing Hopes of his Perſon, and that a martial young Prince, if he be endow'd with any ſhare of his Grandfather's Conduct and Wiſdom, may put* Spain *in a better Condition than it has lately been, to oppoſe* France *in any Attempts it may hereafter make upon the Liberties of* Europe.

O wonderful Contrivance to ſerve his Maſters, and perſuade *England* to lay aſide all thoughts of War! Could he expect to do it by ſuch little fetches as theſe, to ſcare a great and warlike People with his paltry repreſentations of the Power of *France?* or to lull a wiſe Nation aſleep with ſuch a ſilly proſpect of Security? Yet this is one of the great Machins which C---t *Tal—rd* the chief *Fr—ch* Engineer in *England* has made uſe of, not only to bomb great Miniſters, and every thing he has a mind to reduce to Aſhes, but to batter down all the ſtrong Holds and Fortreſſes of our Religion and Liberties. This is he that is careſs'd by great Men of our own Court; this is he that is employ'd to *teach young Gentlemen the Buſineſs of the Nation*; who is to tell them in print a little before the Seſſion begins, what they are to do the next Seſſion. If this be our Condition, that the weighty Affairs of the Kingdom muſt be manag'd by Senators, who are to learn their Wiſdom from ſuch a Wretch as this, in Charity we ought to pray for them, in the Language of our Saviour, *Forgive them, for they know not what they do*; but for our ſelves, in thoſe which we write over the Doors of Peſt-houſes, *Lord have Mercy upon us.* If he, who in times of the greateſt Danger, when it moſt nearly concern'd *Fr—ce* to try the Power of her Gold in *England*, has been highly courted by her *Tal—rd*, and given very great demonſtrations of his Zeal to gratify the Ambition of that Kingdom, can make himſelf an Intereſt, not only to be protected in his Inſolencies, but to be courted likewiſe by a Party, and beſides all this, to have the Honour confer'd upon him, of being made the Leader of the Blind; 'tis eaſy to ſee what in a ſhort time muſt be our Doom: that between the Management and Conduct of Men of too much Intrigue, and too little Underſtanding, we muſt fall under the Dominion of *French* Tyranny and Popery. This the *Kentiſh* Gentlemen thought they had Reaſon to fear, would be the Effect of the Meaſures taken by our Parliament, before they offer'd their Petition. To deſcend to the particulars of their Pro-

(a) Ibid. *p.* 73, 74.

ceedings,

ceedings, which brought them under the ſo univerſal Cenſure and Diſpleaſure of the People, would be too invidious an Undertaking, and raiſe this little Diſcourſe to a much greater bulk than I deſign'd. My Intention is only to ſhew, that the Gentlemen had Reaſons to offer their Petition at that time. If one or two good ones are ſufficient to juſtify them, and they may be taken notice of without any great Offence, I muſt deſire my Reader to reſt ſatisfied with my mentioning them. Matters that are nicer, and will not ſo well bear touching, I leave to be handled by Men of more Penetration, whoſe Fears (I will not ſay Concern) for the Publick are greater perhaps than mine are. If thoſe Petitioners were really perſuaded that *Fr—ch* Gold had any influence in the management of Publick Affairs, 'twas a ſufficient Reaſon for them to endeavour by ſuch a Petition, either to make the *Ho—ſe* of *Com—* take other Meaſures, or to diſpoſe the other parts of the Kingdom to follow their Example. That they were of this Perſuaſion, we have very good Reaſons to believe. We know what one of the five Gentlemen ſaid in a very publick Place, ſome Weeks before the Petition was offer'd, to Sir *Fr—cis Ch—ld*, a Member of Parliament, concerning the Inclination of the *Ho—ſe* of *Com—ns* to ſerve the *Fr—ch* K—g. 'Tis not probable that that Gentleman would have been ſo bold to ſpeak openly, to a Member who was entirely in the Intereſt of that Party which he ſuſpected, words which the other call'd *Seditious*, if he had not reckon'd it a Service he ow'd his Country, in a very great and dangerous Criſis. About the time they petition'd, this ſuſpicion was grown ſo univerſal, that what a Gentleman told Sir *Ed—rd Sey—r* in *Hampſhire*, near the time the Parliament roſe, that *we were bought and ſold*, was the Voice of the People every where. This Jealouſy muſt run very high, and there muſt ſure be very good grounds for it, when a very great Lord could ſay, in a very Auguſt Aſſembly, juſt two days after that Petition was deliver'd, that ſome things that were done, ſhew'd that there was *Fr—ch* Money in the Caſe. But this was not all. Thoſe Gentlemen ſaw, as I obſerv'd before, that not only all the leading Men of that Party, which bore ſway in the *Ho—ſe* of *Com—ns*, but ſome leading Men in the Nation likewiſe, us'd all poſſible endeavours to drive People from the thoughts of War. This thoſe Gentlemen, and the bulk of the People thought the greateſt Service that could be done to *Fr—nce*, and that the certain conſequence of that would be, that in a little time we muſt be content with what Religion, what Liberty,

Liberty, and what Trade *Fr—ce* would be pleas'd to allow us. This being their ſenſe of things, 'twas a ſufficient Reaſon for them to do what they did. What a happy Nation ſhould we be, if others would imitate them in their Zeal, and virtuous Concern for the Publick! Now is the time for *Engliſhmen* to ſhew themſelves. Things are brought to the higheſt Criſis that ever was ſeen in *Europe*. *Fr—ce* plainly deſigns the Univerſal Monarchy: 'Tis War only that can determine, whether ſhe ſhall have it or no. If ſhe prevail, our fate is manifeſt we muſt come under the Dominion of *French* Popery and Tyranny. If ſhe miſcarry, the Miſery and Devaſtation which ſhe will bring into her Kingdom, will be greater than, perhaps, ſhe may be ever able to ſurmount. In this Caſe *England* will not only continue in Poſſeſſion of her Religion and Liberties, but become the greateſt Nation in this Weſtern World. What our Fate ſhall be, depends upon our Management now. 'Tis plain, that without a War we are undone, ſo we may be with it, if thoſe who have the Management of Publick Affairs, ſhould happen to be in the Intereſt of the abdicated Family, or common Enemy, or ſhould be under the old Prejudices againſt the *Dutch*, which were bred in the late Reigns. We know what ſuſpicions we have had, and what grounds there were for them; this makes it abſolutely neceſſary, that the Nation repreſent it ſelf anew. 'Twould be very ſurprizing to ſee the preſent *Par—nt* ſit again, when a great Party in it has given ſuch Umbrage to the Nation; when they were thought (as far as it was poſſible for them to venture, without plainly diſcovering themſelves, and becoming too notorious) to do all that *Fr—ce* could deſire to have done. If their Conduct throughout the Seſſion was ſuch as made it evident, that their Addreſs to the King, towards the latter end, was only deſign'd to prevent their Diſſolution, or ſecure their Election if they ſhould be Diſſolv'd; 'twould be as ſtrange to ſee this *Par—nt* continue, as 'twill be to ſee ſome choſen again, if it ſhould be diſſolv'd. 'Tis upon that Election the Fate of *England* depends: if care be taken to chuſe Perſons, who love our preſent Proteſtant Settlement, and have no manner of Biaſs to *France*, or the Abdicated Family, nothing can prevent the Ruin of *France*, and *England*'s being made a great and flouriſhing Kingdom.

APPEN-

APPENDIX.

A. A Liſt of ſuch Members of this preſent H— of Com—, as refus'd the Voluntary Aſſociation in 1695.

SIR *J—es Eth——dge.*
Ld. *H—de.*
J—n M---nſt---n.
H—y Fl——ng.
J—n Tr——m.
Fr—s Gw—n.
Anth---y H——nd.
Sir *E----d S——ur.*
J—n Gr——il.
Th—s Str——ys.
Th—s Fr—ke of *Dorſ.*
R—d F——nds.
J---n H—w.
R—d H—w.
Th—s Br——ton.
P—r Sh——ly.
Sir *J---n B——lles.*
G—rt D——en.
Sir *R—rt J——ſon.*
H—ry F——nch.
Sir *E—d N——vis.*
Th—s R——ley.
J——es B——rty.
J—n K——ſton.
Sir *J—n Tr——an.*
H—ry H——mes.
Sir *J—n L—ſon G---re.*
Sir *H---ry G——gh.*
J---n L——knor.
W---m Br——ley.
Fr----s Gr——il.
Sir *Ch---r M——ve.*
R—rt B——rty.
W----m H——vey.
H---ry P——nil.
S---l Sw——ſt.
R--t B——lcy.
Sir *J---ry J——rys.*
Sir *J---n C——ay.*

B. Names of the Perſons committed by the H—ſe of Com—ns this Seſſion.

MVSEVM BRITANNICVM

To the Tower.
- *JOHN Parkhurſt*, Eſq;
- *John Paſchal*, Eſq;
- *William Coteſworth*, Eſq;
- *Samuel Shepherd*, Eſq;

To the Gate-houſe.
- Mr. *William Colepeper.*
- Mr. *Thomas Colepeper.*
- Mr. *David Polhill.*
- Mr. *Juſtinian Champneyes.*
- Mr. *William Hamilton.*

} Theſe were firſt taken into Cuſtody of the *Serjeant at Arms*, and after ſent to the *Gate-houſe.*

To Newgate.
- Mr. *Laurence.*
- Mr. *Glover.*

Taken into the Cuſtody of the Serjeant at Arms.
- Mr. *Edward Martyn.*
- Mr. *John Dunmal.*
- Mr. *Clayton.*
- Mr. *Perks.*
- Mr. *Story.*
- Mr. *Jeffreys.*
- Mr. *Bourman.*
- Mr. *Maſon.*
- Mr. *John Newark.*
- Mr. *Marſh.*
- Mr. *Bransby.*
- *Charlwood Lawton*, Eſq;
- Mr. *Alexander Cutting.*
- Mr. *William Adye.*
- Mr. *Edw. Allen.*
- Mr. *Julius Samborne.*
- Mr. *Joſeph Wimbleton.*
- Mr. *Warham.*
- Mr. *John Hayſham.*
- Mr. *William Clifton.*
- Mr. *Edw. Whitacre.*
- Mr. *John Whithrough.*
- Mr. *James Buckly*, Jun.
- *Charles Maſon*, Eſq;
- Mr. *James Buckly*, Sen.
- *Thomas Terry.*